

1418
CN
CC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

STEPHEN McCOLLUM, STEPHANIE
KINGREY, and SANDRA McCOLLUM,
individually and as heirs at law to the Estate of
LARRY GENE McCOLLUM,
PLAINTIFFS

v.

CIVIL ACTION NO.
3:12-cv-02037

BRAD LIVINGSTON, JEFF PRINGLE,
RICHARD CLARK, KAREN TATE,
SANDREA SANDERS, ROBERT EASON, the
UNIVERSITY OF TEXAS MEDICAL
BRANCH and the TEXAS DEPARTMENT OF
CRIMINAL JUSTICE.

DEFENDANTS

PLAINTIFFS' SUPPLEMENTAL DISCLOSURE

Plaintiffs submit the following disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1):

1. A copy of all documents the disclosing party has in its possession, custody or control:
 - a). Hillcrest Hospital Medical Records – Bates Nos. 003240 – 003273.

Dated: November 18, 2013.

Respectfully Submitted,

The Edwards Law Firm
The Haehnel Building
1101 East Street
Austin, Texas 78702
Tel. 512-623-7727
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By /s/ Jeff Edwards
JEFF EDWARDS
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/s/Scott Medlock

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State Bar No. 24032644

TEXAS CIVIL RIGHTS PROJECT
1405 Montopolis Drive
Austin, TX 78741
(512) 474-5073 [phone]
(512) 474-0726 [fax]

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I certify that on November 18, 2013, I sent the foregoing to Defendants' counsels, Bruce Garcia, Jonathon Stone, Kim Coogan, Erika Hime, Lacey Mase, and Demetri Anastasiadis, PO Box 12548, Capitol Station, Austin, TX 78711 *via facsimile*: (512) 495-9139

/s/ Scott Medlock

Scott Medlock

003240

STATE OF TEXAS §

COUNTY OF MCLENNAN §

AFFIDAVIT

HILLCREST BAPTIST MEDICAL CENTER -- MEDICAL RECORDS

BEFORE ME, the undersigned authority, personally appeared
(1) Dorothy V. Uptmor, who being by me duly sworn, deposed as follows:

"My name is (2) Dorothy V. Uptmor. I am over eighteen (18) years of age, of sound mind, capable of making this Affidavit and personally acquainted with the facts herein stated:

I am the custodian of the Medical Records of **HILLCREST BAPTIST MEDICAL CENTER**, located at 100 Hillcrest Medical Blvd., Waco, Texas 76712.

Attached hereto are (3) 33 pages of records from the medical records of
(4) McCollum, Larry, MRN: (5) 51-42-00. These said records are kept by HILLCREST BAPTIST MEDICAL CENTER in the regular course of their business, and it was in the regular course of business of said HILLCREST BAPTIST MEDICAL CENTER, for an employee, representative, or a doctor, with knowledge of the act, event, condition, opinion, or diagnosis, recorded to make the record or to transmit information thereof to be included in such records; and the records were made at or near the time or reasonably soon thereafter. The medical records attached hereto are the exact duplicates of the original records".

(6) Dorothy V. Uptmor
AFFIANT

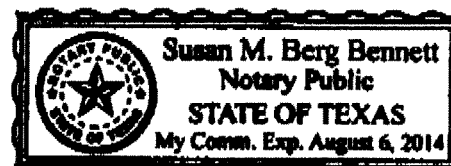
SWORN TO AND SUBSCRIBED before me on the 15 day of November, 2013.

Susan M. Berg Bennett
SIGNATURE OF NOTARY PUBLIC

** This document must be signed by the notary and imprinted with the notary's stamp.

Notary Name: Susan M. Berg-Bennett

Commission Exp. August 6, 2014



003240



Hillcrest Baptist Medical Center
Waco, Texas • www.hillcrest.net

PMH: Systemic HTN DM Cancer HIV Thyroid Anemia ↑Lipids Neuro: CVA Seizures Dementia

Heart: MI Angina CHF CAD AFB Lungs: COPD Asthma GI: PUD GERD Liver

GU: UTI's Stones MS: Arthritis Psych: Depression Anxiety Schizophrenia None

Recent hospitalization for:

Other: LMP:

Surgeries:

Medications: None See Medication Reconciliation Form Pneumococcal vaccine: Flu vaccination:

Allergies: None Latex Iodine See Medication Reconciliation Form

CC: FOOT PROBLEM

TRIAGE:

Source: Patient Family Friend Guardian Nursing home Paramedic Police Interpreter

Mode of arrival: Walk in Carried W/C Friends Attendant Ambulance Helicopter Police

Location: R L Bil Foot Great 2 3 4 5 low

Timing: Onset 3 Minutes Hours Days Weeks Months ago

Context: Mechanism: Inversion Eversion Hyperflexion Hyperextension Blunt trauma Crush

Circumstances: MVA Altercation Work-related Sporting Fall Gout Arthritis

Unknown None

Last tetanus: UTD > 5 years Unknown

Severity: Able to bear weight: YES NO Pain: Mild Moderate Severe None

Other history:

MVC 3 wks ago - Still having "shooting" pain 40% foot.

Name: J. Calurow

NURSING ASSESSMENT:

Room: 29

20:55

Nursing history: 2 Triage assessment reviewed

Source: Patient Family Friend Guardian Nursing home Paramedic Police Interpreter

Prehospital: CPR Intubation O2 IV C-collar Backboard Splints Medis None

Associated signs and symptoms: None

Abrasion Avulsion Laceration Subungual hematoma Numbness Weakness

Pain in: Ankle Leg Knee

Other history:

States large toe @ foot was dislocated in accident

Nursing exam:

Constitutional: Alert Cooperative In distress No distress ETOH

Musculoskeletal:

Digit: 2 Great 2 3 4 Little Prox Mid Distal PIP DIP

Swelling Deformity Limited ROM Tenderness: Mild Moderate Severe normal

Foot R L Lateral Medial Mid Anterior Posterior Dorsum Heel

Swelling Deformity Limited ROM Tenderness: Mild Moderate Severe normal

Distal function: Deficit: Motor Pulse Capillary refill normal

Skin: See Skin Assessment Worksheet

Diaphoretic Pale Abrasion Ecchymosis Erythema Warm Open fracture normal

Laceration: cm Type: Avulsion Flap Linear Jagged Stellate

Other exam:

Has been taking 3000 mg of Tylenol at a time for the pain.

NURSING DIAGNOSIS: Altered comfort: Pain Impaired physical mobility

NURSING PLAN: To appropriate area Elevate Apply ice

EXPECTED OUTCOME: Pain control/Absent Maintain/Increase mobility

RN Markus RA

LVN

EMERGENCY DEPARTMENT NURSING RECORD

PCP: D Notified: Y N

Triage Vital Signs

P	RR	BP
<u>98</u>	<u>70</u>	<u>130/85</u>
O2 Sat	Pain	TS
<u>100</u>	<u>4/10</u>	<u>15</u>

Orthostatic/Tilt Test

BP	P	Time
<u>1</u>		



FLACC

	0	1	2
Face	No expression or smile	Occ. frown, withdrawn	Freq. quiver chin
Legs	Not pos or relaxed	Uneasy, restless	Kicking, legs drawn up
Act.	Not pos, moves easy	Squirming, tense	Arched or jerking
Cry	No cry	Whimpers, moans	Crying, sobs or screams
Cons.	Content, relaxed	Reassured with touch	Difficult to console

Total FLACC score

Triage Acuity

1	2	3	4	5
			<u>4</u>	

Triaged to:

Major	Intermediate	Minor
	<u>Intermediate</u>	

Smoker: Yes No

Cessation advised: Yes No

Domestic Violence Screening

Are you in a relationship in which you have been physically hurt or threatened by your partner? Y N Unwilling to answer

Do you feel safe in your current environment? Y N Unwilling to answer

Functional Screening

Do you have trouble taking care of yourself - with feeding, dressing? Y N Unwilling to answer

Suicide Assessment Screening

Have you had thoughts of harming/injuring yourself? Y N Unwilling to answer
Have you harmed/injured yourself in the last 6 months? Y N Unwilling to answer

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MCCOLLUM, LARRY OERMAJ
04/04/1953 57/M W
01/25/11

Appendix 334



FOOT PROBLEM

PMH: Systemic: HTN DM Cancer HIV Thyroid Anemia ↑Lipids Neuro: CVA Seizures Dementia
Heart: MI Angina CHF CAD AFB Lungs: COPD Asthma GI: PUD GERD Liver
GU: UTI's Stones MS: Arthritis Psych: Depression Anxiety Schizophrenia None
Operations: Appendectomy BTL CABG Cholecystectomy Hys PTCA Stent x None

Other: TBCAB Thoracob
 FH: Stroke Heart Lung Liver SH: Smokes: Current Past ppd x yrs Slav
 Kidney HTN DM Cancer ETOH: Social Abuse Alcoholice None
 None Illicit drugs: None
 Lives with: Mom Dad Spouse Family SO Alone
 Lives in: Home Assisted care Homeless

Allergies: Time seen 2:20
 CC: Foot: Pain / Swelling / Deformity Rt dislocated (P) great toe 4 wks
no. he is still having pain

Reason for visit: Acute symptoms Exacerbation chronic symptoms Doctor sent Work sent From out of town
 PCP

HPI: Source: Patient Family Friend Guardian Nursing home Paramedic Police Interpreter
 Mode of arrival: Walk-in Carried W/C Friends Attendant Ambulance Helicopter Police
 Location: R L Bil Foot Great 2 3 4 5 toe
 Timing: Unset 4 a.m. p.m. or Minutes Hours Days Weeks Months ago
 Severity: Able to bear weight: Only Limited No Pain: Mild Moderate Severe None

Context: Mechanism: Inversion Eversion Hyperflexion Hyperextension Blunt trauma Crush
 Unknown No injury
 Circumstances: MVA Altercation Work-related Sporting Fall Gout Arthritis
 Spontaneous Unknown None
 Last tetanus: UTD > 5 years Unknown
 Associated signs and symptoms: None
 Abrasion Avulsion Swelling Laceration Subungual hematoma Numbness Weakness
 Pain in: Ankle Leg Knee
 Other history: Prehospital orders given by ED Physician: See NN

PE: T P BP RR *O2 Sat on RA or L/min
 Pulse oximetry interpretation: Normal Mild Moderate Severe desaturation
 *Constitutional: None ETOH Ill-appearing Distress: None Mild Moderate Severe
 EENT: PERRA Hearing intact Membranes moist
 Neck: ROM Good Restricted Tender C 1 2 3 4 5 6 7
 Respiratory: Breath Sounds Diminished
 R L Generalized Superior Inferior Wheezes Rales Rhonchi
 CV: Regular rate/rhythm Tachycardia Bradycardia Irregular S3 S4 MI Sys Dia Murrur

Musculoskeletal:
 Nail: R L Great 2 3 4 Little
 Avulsed Lacerated Ingrown
 Nailbed: Avulsed Lacerated Subungual hematoma
 Soft tissue: Tender Erythema Swelling Drainage Paronychia
 Digit: R L Great 2 3 4 Little Prox Mid Distal PIP DIP
 Swelling Deformity Limited ROM Tenderness: Mild Moderate Severe
 Strength: MP PIP DIP Flexion Extension: Decreased Absent
 Foot: R L Lateral Medial Mid Anterior Posterior Dorsum Heel
 Swelling Deformity Limited ROM Tenderness: Mild Moderate Severe
 Ankle: R L Medial Lateral Anterior Posterior
 Swelling Deformity Limited ROM Tenderness: Mild Moderate Severe
 Achilles tendon: Tender Defect Absent
 Distal function: Deficit: Motor Pulse Capillary refill

Neurologic: Sensory deficit
 Skin: A bruise Echinymosis Erythema Wound Open fracture
 Laceration: cm Type: Avulsion Flap Linear Jagged Stellate
 Through To: Skin Nail Nailbed SQ Tendon Bone No obvious abnormalities
 Psychiatric: Oriented X Memory: Intact Impaired
 Other exam:



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 Circled = positive Not circled or / = negative Lined out or section completely blank = not assessed

EMERGENCY DEPARTMENT PHYSICIAN RECORD

Triage nurse's notes reviewed ☐

HISTORY / EXAM LIMITED BY:
 Altered mental status Dementia Medical urgency
 Intubated Other

REVIEW OF SYSTEMS
 ALL OTHER SYSTEMS NEGATIVE
 EXCEPT AS NOTED ☐

CONSTITUTIONAL:
 Fever Chills Fatigue

EYES:
 Blurred vision Discharge Pain

ENT:
 Ears: Pain Hearing loss
 Nose: Congestion Bleeding
 Throat: Pain Swelling

RESPIRATORY:
 Cough SOB Wheeze Hemoptysis

CV:
 Chest pain Palpitations Syncope

GI:
 Abdominal pain Nausea Vomiting

GU:
 Dysuria Hematuria Frequency
 Male: Discharge Testicular pain
 Female: Discharge Bleeding Pregnant

NEUROLOGICAL:
 Headache Dizziness Weakness

MUSCULOSKELETAL:
 Pain or swelling in: R great toe

INTEGUMENTARY:
 Itching Rash Bruises Wounds

ALLERGIC/IMMUNOLOGIC:
 Hives Itching

HEMATOLOGIC:
 Lymphadenopathy
 Easy: Bruising Bleeding

ENDOCRINE:
 Recent weight changes: Gain Loss
 lb

PSYCHIATRIC:
 Anxiety Depression Hallucinations

Level 1=0 Level 2=1 Level 4=2-9 Level 5=10+

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MEDICAL DECISION MAKING

1. Additional information obtained from:
Old records Family Caretaker PCP (findings):

2. Differential Diagnosis: Considerations may include:

Abrasion	Contusion	Hematoma	Puncture
Arthritis	Dislocation	Ingrown toenail	Sprain
DJD	Fracture	Laceration	Subungual hematoma
Gout	Metatarsal	Neurovascular injury	
Rheumatoid	Phalynx	Open fracture	
Septic	Tarsal	Paronychia	

3. Summary of Treatment in ED:

TO from Heioaweech. P+ E
persistent pain. Xray shows
fracture.
walk by boot, podiatry f/u.

Reevaluation: 1st : Resolved Worsened Improved Unchanged
2nd : Resolved Worsened Improved Unchanged
3rd : Resolved Worsened Improved Unchanged

Consultation: PCP Orthopedic surgery Other

Called: a.m. p.m. Call returned: a.m. p.m.

Findings: See consult or Summary:

Patient Family Education Counseling regarding:

Diagnosis Treatment Prognosis Need for follow-up

PROCEDURES (Unless otherwise indicated, all procedures were done or directly supervised by ED attending)

Risks, benefits, and alternatives described. Informed consent obtained: YES NO Time Out performed: YES NO

☐ IV sedation was performed under my direct supervision. See procedural note and flow sheet for documentation

☐ Digital Metatarsal nerve block with Lidocaine Bupivacaine

☐ Reduction was performed by: Orthopedic staff Myself with resultant
Reduction or Good Acceptable Poor alignment

☐ Splint: Posterior AO Stirrup splint applied by: Ortho. Nurse Tech. Myself
Examined post splint application: NV intact Alignment good

☐ See procedure note on attached page for details and/or additional procedures

IMPRESSION

Toe fracture (distal phalanx,
1st metatarsal, (R) SCALOID)

☐ Critical Care time minutes or ☐ 30-74 minutes ☐ 74+ minutes
(Time spent performing separately billable procedures is excluded)

DISCHARGE INSTRUCTIONS

☐ See separate Discharge Instruction sheet

Podiatry f/u 2 weeks
NSAIDs. artro boot.

Disposition: Discharge F/U at: ☐ > 24 hrs ☐ < 24 hrs with Dr.:

Admit Observation to: Floor ICU Time: to Dr.:

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Foot problem

PA

MD/DO

REVIEW of RESULTS

Meditech reviewed

WBC	NA	PT/PTT
HGB	K	pH
HCT	CL	pCO2
PLT	CO2	pO2
Seps	Glucose	HCO3
Bun	BUN	
Cr	Cr	02 Sat
Ca	Ca	

URINALYSIS	Ketones	MICRO
Sp	Blind	WBC
pH	Nitrite	RBC
Pro	Leuk	EPI
Gl		Bact

☐ All labs reviewed

OTHER

XR Interpreted by: Radiologic Self Both

Foot: (P)

*EKG Interpreted by ED Physician

Compared to prior EKG dated / /
Rate bpm Axis: Normal LAD RAD
Rhythm: NSR SB ST PACs Afib Aflutter PSVT
MAT Junctional JuncT PVCs VT VF Paced
Block: None 1 2 3 AVB BBB: R L IVCD
Hypertrophy: None LAE RAE LVH RVH
ST-T changes: None New Old Inf Ant Lst
Ischemia Infarct Nonspecific

Other:

Monitor/Rhythm strip Interpret: Rate Ectopy: V N
NSR SB ST PACs AF PSVT MAT PVCs VT VF

ADDITIONAL NOTES

☐ Patient history was reviewed and I agree with the Resident / NP / PA findings, unless otherwise stated. Relevant findings of the HPI are

My personal exam shows
I agree with the assessment and care plan and confirm the diagnosis(es) listed with the following exceptions:

Please see Resident / MLP note for further details

☐ See dictated addendum

☐ Reviewed with Dr. who
assumed care at
Pending:

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Jr. Peter Richardson M.D.
PVID# 31159

***If patient answers yes to any of the below questions, please place a yellow armband to their wrist.**

1. Do you fall unexpectedly or frequently?

Yes

No

2. Do you use any assistive devices to help walk?

Yes

No

If yes, cane _____ walker _____ wheelchair _____ other _____

3. Do you feel dizzy when you get up from a bed or chair?

Yes

No

4. Do you have any problem with your feet (like pain, numbness)?

Yes

No

[Signature]
Nurses Signature

1-25-11
Date

F774-428(05/08)

HILLCREST BAPTIST MEDICAL CENTER
Waco, Texas

**FALL RISK ASSESSMENT
ER QUESTIONNAIRE**

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04/04/1953 57/M W
01/25/11



Millcrest Baptist Medical Center
 Main Texas - www.millcrest.com

003256

EMERGENCY DEPARTMENT NURSING RECORD

PMH: Systemic: HTN DM Cancer HIV Thyroid Anemia ↑Lipids Neuro: CVA Seizures Dementia
Heart: MI Angina CHF CAD AFB Lungs: COPD Asthma GI: PUD GERD Liver
GU: UTI's Stones MS: Arthritis Psych: Depression Anxiety Schizophrenia None

Recent hospitalization for: _____

Other: _____ LMP: _____

Surgeries: _____

Medications: None See Medication Reconciliation form Pneumococcal vaccine: _____ Flu vaccination: _____

Allergies: None Latex Iodine See Medication Reconciliation form

PCP: _____ Notified: Y N

Triage Vital Signs

T _°	P	RR	BP
98.3		17	154/50
O ₂ Sat	Pain	TS/GCS	Wt lb kg
91%	2/10	15	

Orthostatics/Tilt Test

	BP	P	Time
↑			



FLACC

	0	1	2
Face	No expression or smile	Occ. frown, withdrawn	Freq. quivering chin
Legs	Limbs relaxed	Uneasy, restless	Kicking, legs drawn up
Act.	Limbs passively move easily	Squirming, tense	Arch or jerking
Cry	No cry	Whimpers, moans	Crying, sob or screams
Cons.	Content, relaxed	Reassured with touch	Difficult to console

Total FLACC score _____

Triage Acuity

1	2	3	4	5

Triage to:

Major	Intermediate	Minor

Smoker: Yes No
 Cessation advised: Yes No

Domestic Violence Screening

Are you in a relationship in which you have been physically hurt or threatened by your partner? Y N Unwilling to answer

Do you feel safe in your current environment? N Unwilling to answer

Functional Screening

Do you have trouble taking care of yourself with feeding, dressing? Y N Unwilling to answer

Suicide Assessment Screening

Have you had thoughts of harming/injuring yourself? Y N Unwilling to answer
 Have you harmed/injured yourself in the last 6 months? Y N Unwilling to answer

CC: MOTOR VEHICULAR COLLISION (Minor)

Arrival	02:20
Actual	02:20

TRIAGE:

Source: Patient Family Friend Guardian Nursing home Paramedic Police Interpreter
 Mode of arrival: Walk in Carried W/C Friends Attendant Ambulance Helicopter Police
 Timing: Injury occurred _____ Minutes Hours ago
 Context: Patient: Driver Passenger Pedestrian Front seat Rear seat
Restrainted Unrestrained Helmeted Ambulated at scene
 Vehicle: Motor vehicle Motorcycle Bicycle Other _____
 Last tetanus: UTD > 5 years Unknown

Location (of pain or injury): None

Head Neck Back Face Mouth Eye Ear Nose Chest Abdominal Pelvis
R Shoulder Arm Elbow Forearm Wrist Hand Hip Thigh Knee Leg Ankle Foot
 L Shoulder Arm Elbow Forearm Wrist Hand Hip Thigh Knee Leg Ankle Foot

Other history:

① ② Wincing Head on collar
 ① ② Foot pain, leg deficit

Nurse: Eric Rando

NURSING ASSESSMENT:

Room: 8

02:20

Nursing history: Triage assessment reviewed

Source: Patient Family Friend Guardian Nursing home Paramedic Police Interpreter
 Prehospital: CPR Intubation O₂ IV C-collar Backboard Splints Meds None
 Context: Mechanism: Struck Struck by Motor vehicle Motorcycle Bicycle Stationary object
 Rear-ended Head-on Broadside

Associated signs and symptoms: None

ETOH Confusion Headache Paralysis Numbness N V

Other history:

① HA

Nursing exam:

Constitutional: Alert Cooperative Confused Somnolent Comatose In distress ETOH
 Respiratory: R L Bil Generalized Superior Inferior Wheezes Rales Rhonchi normal
 CV: Tachycardia Bradycardia Irregular normal

Musculoskeletal:

R Shoulder Clavicle Arm Elbow Forearm Wrist Hand Hip Thigh Knee Leg Ankle Foot
 Tender Swelling Deformity Pulse deficit Sensory deficit Motor deficit normal
 R L Back: Thoracic Lumbar Midline Paraspinous Tender Swelling normal
 Skin: See Skin Assessment Worksheet Diaphoretic Pale normal

Lacerations: Location: R L none

Other exam: GCS 15

① Normal to ② injury

Eye Opening	Best Motor	Verbal
Obers	6	
Localizes	5	Orients 5
Spontaneous 4	Normal 4	Confused 4
To speech 3	Abn flexion 3	Isappr. words 3
To pain 2	Brumation 2	Incomprehension 2
None 1	None 1	None 1

NURSING DIAGNOSIS: Potential impaired airway Altered comfort: Pain Potential hemorrhage

NURSING PLAN: To appropriate area Stabilize airway Immobilize C-spine IV acc

EXPECTED OUTCOME: Airway maintained Pain control/Absent Hemodynamically

RN Eric Rando

LVN _____

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Time	T	P	HR	BP	O2 Sat / amt	Pain	GCS	Time	T	P	RR	BP	O2 Sat / amt	Pain	GCS
0530															
0513	76	16	140	100	RA	2-3	15								

Time	NURSES NOTES	ini
0722	Rel pt moved, left RT S/P mvc. pt full jmp. No appt. gpi to R no f(R) Ant. pedal pho eqnt (R) as quasi definite is li	S
0829	pt wnt off back bagel. At abd & some spine & low extension eqnt, no distn wth	
0900	at bwn & CT, no distn wth	
0920	Closed robot- infed by CRMS at distn well. A-Ty to confir plant. pt is in chry	
0940	Report rec'd from ERamas RN Care assured, Alast Resp ever, unaltered - No distress	
0953	Foot-as shoe applied (R) foot via Whitford & RN D/C instructions, Rt & education Handouts explained, Di & meds prescribed, curv, verbalized understanding D/C'd to ER waiting Va Wheelchair	J

<u>NOTIFICATIONS</u>	
Family:	_____
Nursing home:	_____
Pastoral care:	_____
PCP:	_____
Police:	_____
Social services:	_____

PATIENT SUPPORT

- ☐ Emotional support given
- ☐ Learning needs addressed
- ☐ Translation services provided
- ☐ Post mortem care provided
- ☐ Plan of care discussed
- ☐ Universal Time Out Form completed

Oral		Urine	
IV		NG	
Blood		Blood	
Other		Other	
Total		Total	

Caregiver # 1 <i>Sping River</i>	Int <i>✓</i>	Caregiver # 3	Int
Caregiver # 2 <i>Harlee Rd</i>	Int <i>CP</i>	Caregiver # 4	Int

Discharge: LWBS AMA Expired Admitted Transferred to: _____ ☐ Transfer form completed
 Available to: Patient Family Friends Security Envelope # _____ Other: _____
 Mode of departure: Walking Carry Wheelchair Cart Auto Ambulance MediVan Stretcher _____
 Condition on discharge: Pain scale: 3/3 NA Improved Worsened Good Fair Poor Stable Unstable Critical
 Prescriptions given: # 1 Tricor
☒ Verbalizes understanding of discharge instructions ☐ Barriers to understanding or learning _____
 Written Verbal instructions given to: _____
 Patient Parents Caregiver _____
 Referred to: POP PRN / in _____ days Discharged by: [Signature] 05/13



MVA

PMH: Systolic: HTN DM Cancer HIV Thyroid Anemia ↑Lipids Neuro: CVA Seizures Dementia
Heart: MI Angina CHF CAD AFib Lungs: COPD Asthma GI: PUD GERD Liver
UTI's: Stones MS: Arthritis Psych: Depression Anxiety Schizophrenia None
Operations: Appendectomy BTL CARO Cholecystectomy Hyst PTCA Stent x None

Other: TBCAB Thorazab Edema

PH: Stroke Heart Lung Liver SM: Smokes: Current Past ppd x yrs Never
 Kidney HTN DM Cancer ETOH: Social Abuse Alcoholic None
 None Illicit drugs: None
 Lives with: Mom Dad Spouse Family SO Alone
 Lives in: Mom Assisted care Homeless

Allergies: None Time seen

CC: MVA with complaints of: (2) Foot (1) Knee, Forehead

Reason for visit: Acute symptoms Exacerbation chronic symptoms Doctor sent Work sent From out of town

HPI: PCP

Source: Patient Family Friend Guardian Nursing home Paramedic Police Interpreter
 Mode of arrival: Walk in Carried W/C Friends Attendant Ambulance Helicopter Police
 Timing: Occurred: 10 a.m. p.m. or Months Hours Days Weeks Months ago
 Severity: Code 1 2 3 4 Pain: Mild Moderate Severe or 10/10
 Duration: LOC for 10 Minutes Hours Unknown None

Context:

Patient: Driver Passenger Pedestrian Front seat Rear seat
 Restrainted Unrestrained Helmeted Ambulated at scene
 Last tetanus: UTD > 5 years Unknown

Vehicle: Motor vehicle Motorcycle Bicycle Other
 Speed: Slow Moderate High Unk Damage: None Mild Moderate Severe
 Windshield: Intact Broken Unk Steering wheel: Intact Collapsed Unk

Airbag: Inflated Noninflated Unk
 Mechanism: Struck Struck by: Motor vehicle Motorcycle Bicycle Stationary object
 Rear-ended Head-on Broadside 730 mph

Prehospital: Who: EMT Paramedic Helicopter Another hospital None
 What: CPR Intubation Collar Backboard Splints IV None

Location (of pain or injury): Specify Foot, Knee, Head None

Associated signs and symptoms: ETOH Confusion Headache None

Other history: Prehospital orders given by ED Physician:

PE: T 98 P 154 BP 150 RR 17 *O2 Sat 100 on RA or L/min

Pulse oximetry interpretation: Normal Mild Moderate Severe desaturation

*Constitutional: Alert ETOH Ill-appearing Distress: None Mild Moderate Severe

Head: NCAI R L Frontal Temporal Parietal Occipital Vertex

Swelling Ecchymosis Deformity Tender Abrasion Laceration

Neck: WNL in collar Tender Step off Tracheal deviation JVD Adenopathy

Face: Swelling Abrasion Tender: Periorbital Zygoma Arch Maxilla Mandible

Eyes: PEER Unequal od mm os Subconjunctival hemorrhage

Ears: Normal R L Swelling Ecchymosis Hemotympanum Abrasion Laceration

Nose: Normal Swelling Ecchymosis Deformity Tender Abrasion Laceration

Intranasal: Blood Abrasion Laceration Septum: Hematoma Deviation

Mouth: Swelling Ecchymosis Tender Abrasion Laceration

Respiratory: Breath Sounds: Clear Diminished

R L BP Generalized Superior Inferior Wheezes Rales Rhonchi

CV: Regular rate/rhythm Tachycardia Bradycardia Irregular S3 S4 VI Sys Dia Murmur

Chest: R L Ant Post Lat or # None None Swelling Crepitance

GI: Auscultation: Bruit Bowel sounds: Present Absent Increased Decreased High-pitched

Tenderness: None Diffuse RUQ RLQ LUQ LLQ Epigastric Periumbilical Suprapubic

Mild Moderate Severe Rebound Guarding Rigidity

Extremities: Normal ROM all joints Pain on motion

Musculoskeletal:

(R) Shoulder Clavicle Arm Elbow Forearm Wrist Hand Hip Thigh Knee Leg

Ankle Foot Tender Swelling Deformity Deficit: Pulse Sensory Motor

(L) Shoulder Clavicle Arm Elbow Forearm Wrist Hand Hip Thigh Knee Leg

Ankle Foot Tender Swelling Deformity Deficit: Pulse Sensory Motor

R L Back: Thoracic Lumbar Midline Paraspinous Tender Swelling

R L Pelvis: Tender Swelling Deformity Instability Crepitance

Neurologic: Oriented to: Time Person Place Not oriented Unable to test

Motor function: R L Arm Leg Face Weak Unable to test page all 4

(see next page)

003258 EMERGENCY DEPARTMENT PHYSICIAN RECORD

Triage nurse's notes reviewed ☒

HISTORY / EXAM LIMITED BY:

Altered mental status Dementia Medical urgency
 Intubated Other

REVIEW OF SYSTEMS

ALL OTHER SYSTEMS NEGATIVE
 EXCEPT AS NOTED ☐

CONSTITUTIONAL:

Fever Chills Fatigue

EYES:

Blurred vision Discharge Pain

ENT:

Ears: Pain Hearing loss
 Nose: Congestion Bleeding
 Throat: Pain Swelling

RESPIRATORY:

Cough SOB Wheeze Hemoptysis

CV:

Chest pain Palpitations Syncope

GI:

Abdominal pain Nausea Vomiting

GU:

Dysuria Hematuria Frequency
 Male: Discharge Testicular pain
 Female: Discharge Bleeding Pregnant

NEUROLOGICAL:

Headache Dizziness Weakness

MUSCULOSKELETAL:

Pain or swelling in: Knee, Foot

INTEGUMENTARY:

Itching Rash Bruises Wound

ALLERGIC/IMMUNOLOGIC:

Hives Itching

HEMATOLOGIC:

Lymphadenopathy
 Easy Bruising Bleeding

ENDOCRINE:

Recent weight changes: Gain Loss
lb

PSYCHIATRIC:

Anxiety Depression Hallucinations

Level 1=0 Level 2, 3=1 Level 4=2-9 Level 5=10+

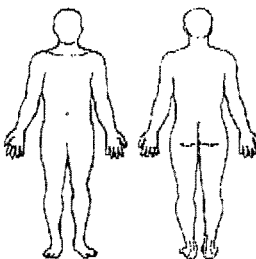
V00066625294 MR M000514200
 MCCOLLUM, LARRY OERMAJ
 04/04/1953 57/M 12/24/10

(8)

003259

Skin: (See drawing) Abrasions normal
Laceration: Location: R L cm
Type: Avulsion Flap Linear Jagged Stellate Irregular
Through To T & T: Skin Mucosa SQ Muscle Tendon
Fascia Joint Bone Vermilion border
Foreign body: None
Distal function: Deficits: Motor Sensory Pulse Normal
Other exam:

Abrasion (A)
Ecchymosis (E)
Laceration (L)
Swelling (S)



MEDICAL DECISION MAKING

1. Additional information obtained from:
Old records Family Caretaker PCP (findings)

2. Differential Diagnosis: Considerations may include:

Trauma	Skin
Closed head injury	Abrasion (s)
Cardiac injury	Contusion (s)
Fracture (s)	Foreign body (s)
Intraabdominal injury	Hemorrhage (s)
Pneumothorax	Laceration (s)
Pulmonary contusion	
Spine injury	
Tracheal injury	
Urological injury	
Vascular injury	

3. Summary of Treatment in ED:

Reevaluation: 1st Resolved Worsened Improved Unchanged
2nd Resolved Worsened Improved Unchanged
3rd Resolved Worsened Improved Unchanged

Consultation: PCP Surgery Other

Called: am p.m. Call returned: am p.m.

Findings: See consult or Summary:

Patient Family Education Counseling regarding:
Diagnosis Treatment Prognosis Need for follow-up

PROCEDURES (Unless otherwise indicated, all procedures were done or directly supervised by ED attending)

Risks, benefits, and alternatives described. Informed consent obtained: YES NO Time Out performed: YES NO

☐ Wound care: No closure Area of repair cm Wound length cm

Anesthetic: Local Topical with Lidocaine Bupivacaine Epinephrine

Prep: Saline Betadine Shur-Clenz by Irrigation Manual scrub

Debridement: Minimal Moderate Extensive Foreign bodies Identified Removed

Repair: Skin # -0 Nylon Prolene Wound adhesive Staples Steri-strips

Subcu. # -0 Chromic Vicryl

☐ Splint: Velero Aluminum-foam Sugar tong Cock-up Volar Stirrup ACE

splint applied by: Orthopedic staff Nurse Tech. Myself

Examined post splint application: NV intact Alignment good

☐ See procedure note on attached page for additional procedures

IMPRESSION

① Right first toe proximal phalanx dislocation

② Mild closed head injury

☐ Critical Care time minutes or ☐ 30 ☐ 74 minutes ☐ 74+ minutes
(Time spent performing separately billable procedures is excluded)

DISCHARGE INSTRUCTIONS

☐ See separate Discharge Instruction sheet

post-op shoe @ foot 4-6 wks

Ice + Elevate foot over next 48h

Disposition: Discharge F/U in: ☐ >24 hrs ☐ <24 hrs with Dr.:

Admit Observation to: Floor ICU Time: to Dr.:

REVIEW of RESULTS

Meditech reviewed

WBC	NA	FI02
HGB	K	pH
HCT	CL	pCO2
PLT	CO2	pO2
Ser	Glu	HCO3
Bands	BUN	02 Sat
Lymph	Cr	
Mono	Ca	

URINALYSIS	Ketones	MICRO
SpG		WBC
pH	Blood	RBC
Prot	Nitrite	EPI
Glu	Leuk	Bact

☐ All labs reviewed

OTHER

PT PTT INR

XR Interpreted by: Radiologist Self Book
C spine: Foot: 1st toe prox. phalanx, distal
Knee: ⊖
Pelvis: C-Spine: ⊖
CT Head: ⊖

*EKG Interpreted by ED Physician

Compared to prior EKG dated
Rate bpm Axis: Normal LAD RAD
Rhythm: NSR SB ST PACs Afb Alliter PSVT
MAT Junctional Junct T PVCs VT VF Paced
Block: None 1 2 3 AVB BBB: R L IVCD
Hypertrophy: None LAE RAE LVH RVH
ST-T changes: None New Old Inf Ant Lat
Ischemia Infarct Nonspecific

Other:

Monitor/Rhythm strip Interpret: Rate Ecctopy: Y N
NSR SB ST PACs AF PSVT MAT PVCs VT VF

ADDITIONAL NOTES

☐ Patient history was reviewed and I agree with the Resident / NP / PA findings, unless otherwise stated. Relevant findings of the HPI are

My personal exam shows
I agree with the assessment and care plan and confirm the diagnosis(es) listed with the following exceptions:

Please see Resident / MLP note for further details

See attached procedure note.

C-Spine: cleared clinically.

☐ See dictated addendum

☐ Reviewed with Dr. who
assumed care at
Pending

V00066625294 MR M000514200
MCCOLLUM, LARRY OERMAJ
01/04/1953 57/M

12/24/10

***If patient answers yes to any of the below questions, please place a yellow armband to their wrist.**

1. Do you fall unexpectedly or frequently?

Yes ☒ No

2. Do you use any assistive devices to help walk?

Yes ☒ No

If yes, cane _____ walker _____ wheelchair _____ other _____

3. Do you feel dizzy when you get up from a bed or chair?

Yes ☒ No

4. Do you have any problem with your feet (like pain, numbness)?

☒ Yes ☐ No

C. Parsee RN

Nurses Signature

12/24/10

Date

F771-438(05/08)

HILLCREST BAPTIST MEDICAL CENTER
Waco, Texas

**FALL RISK ASSESSMENT
ER QUESTIONNAIRE**

V00066625294
MCCOLLUM, LARRY
04/04/1953 57/M

MR M000514200
CERMAJ

12/24/10

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

STEPHEN McCOLLUM, STEPHANIE
KINGREY, and SANDRA McCOLLUM,
individually and as heirs at law to the Estate of
LARRY GENE McCOLLUM,

PLAINTIFFS

v.

BRAD LIVINGSTON, JEFF PRINGLE, and the
TEXAS DEPARTMENT OF CRIMINAL
JUSTICE.

DEFENDANTS

CIVIL ACTION NO.
3:12-cv-02037

PLAINTIFF'S INITIAL DISCLOSURES

Plaintiffs make these initial disclosures as required by Fed. R. Civ. P. 26(a)(1)(A). Plaintiffs reserves the right to supplement these initial disclosures at any time.

1. **The names and, if known, the address and telephone number of each individual likely to have discoverable information--along with the subjects of that information--that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;**

For every person Plaintiffs identify, they provide the individual's last known mailing address, business address, phone number, or unit.

Sandra McCollum
c/o Jeff Edwards
The Edwards Law Firm
The Bremond Houston House
706 Guadalupe
Austin, Texas 78701
Tel. 512-623-7727

Patient Name: McCollum, Larry Gene (MRN: 4493765)

All Notes (continued)

MRN: 4493765

Focus of Care: Patient

Faith Community: Baptist
Who Initiated Visit: Chaplain
Date Referral Received:
Time Received:
Length of Contact:
Response Category: Routine

Reason For Visit: Follow Up;Length of Stay

Assessment: Patient/Family Unavailable for Care

Goals: Experience Supportive Presence

Plan of Care:

Follow Up Required?: Yes (24 hour ICU goal)

A. Follow Up Time Frame: Other (Comment) (24 hour ICU goal)

Refer to:

Or

Discharge Refer to:

Date:

Time:

B. Interventions: Sacraments/Ritual;Prayer

Electronically signed by:

ROSS PRATER

7/28/2011 1523

Electronically Signed by Ross Prater at 07/28/11 1523

Progress Notes signed by Kevin Ross Davidson, MD at 07/28/11 1538

Author: Kevin Ross Davidson, Service: Pulmonary Diseases Author Type: PGY 3
MD

Filed: 07/28/11 1538 Note Time: 07/28/11 1531

Brief MICU Note

I have spoken with the family including Mr. McCollum's wife, daughter, and sons. They understand the patient's critical condition and extensive neurologic injury. We have discussed the results of the MRI including his diffuse anoxic brain injury and compressive hydrocephalus. After discussion of treatment options, the wife and family have decided to pursue comfort measures only and to withdraw care. This decision is in keeping with the patient's previous expressed beliefs to not want life support or live in a manner where he did not have his full faculties. We are awaiting additional family members to arrive at bedside and join the wife, son, and daughters who are here. The police officers guarding the patient have been notified as well.

Davidson x4099

Electronically Signed by Kevin Ross Davidson, MD at 07/28/11 1538

Progress Notes signed by Lance S. Terada, MD at 07/28/11 1541

Mon Sep 12, 2011 4:08 PM

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Patient Name: McCollum, Larry Gene (MRN: 4493765)

All Notes (continued)

Progress Notes signed by Lance S. Terada, MD at 07/28/11 1541 (continued)

Author: Lance S. Terada, MD Service: Internal Medicine Author Type: Attending
 Filed: 07/28/11 1541 Note Time: 07/28/11 1140
 Related Original Note by: Kevin Ross Davidson, MD filed at 07/28/11 1205
 Notes:

MICU / Pulmonary Team III Note:

Had MRI/MRA done this morning showing extensive global strokes as well as acute compressive hydrocephalus. Neurosurgery and neurology both consulted. Patient less responsive on exam. Remains hypernatremic.

Hospital Day: 7
 Drips: None
 Lines: Rt radial A-line 7/22
 Right brachial PICC 7/25
 Foley, rectal, OG
 Antibiotics: None

Vent Day: 7
 AC: Vt 500 / 16 / 40% / +5
 VS: Tc 38.2 70-115 95-160/50-90 18-22 71 93/50 20 96% Vent
 I/O: +2.9 | -3.8 | -0.9

General: unresponsive, vented
 Chest: diminished on right, symmetric chest rise, no wheezes, coarse
 Cardiac: Distant, unable to appreciate
 Abd: Obese, soft, +foley/rectal tube
 Neuro: Pupils no longer reactive, no longer withdrawing from pain.
 Ext: Nonpitting edema of bilat UE, warm, good cap refill, no petechiae

Medicines:

sterile water injection for medication reconstitution	5 mL	BID (DIURETIC)
ranitidine (ZANTAC) syrup DOSE: 150 mg	150 mg	BID
insulin regular sliding scale injection	2-14 Units	Q6H
insulin NPH (HUMULIN N;NOVOLIN N) injection	5 Units	BID
acetaminophen (TYLENOL) oral solution DOSE: 650 mg	650 mg	Q4HR PRN
multivitamin oral solution DOSE: 5 mL	5 mL	DAILY
lidocaine injection 1%	10 mL	PRN
hydroxypropyl methylcellulose (ISOPTO TEARS) 0.5 % ophthalmic solution	1 Drop	PRN
sodium chloride 0.9% infusion		CONTINUOUS

Na 149
 K 3.8
 Cl 113
 CO2 32
 BUN 47
 Cr 1.44 (1.62)

WBC 2.62
 Hgb 8.8
 Hct 26.4
 Plat 75

AST 340
 ALT 172

7/22 Neuron specific enolase Pending

Micro: 7/22 Blood NG
 7/22 Urine NG

Mon Sep 12, 2011 4:08 PM

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Patient Name: McCollum, Larry Gene (MRN: 4493765)

All Notes (continued)

7/22 C Diff NG

7/22 Fecal WBC Neg

Problem List:

10. Unresponsiveness
11. Resolving multi-organ dysfunction
12. Azotemia
13. Acute renal failure
14. Rhabdomyolysis
15. Anemia
16. Shock liver
17. Hyperthermia, resolved
18. Unwitnessed single seizure

Assessment & Plan:

58 yo M presenting from prison after report of generalized seizure and marked hyperthermia. The patient was intubated in the ER for unresponsiveness and developed acute renal failure, rhabdomyolysis, and circulatory shock which are now nearly resolved. Overnight he had MRI/MRA which shows extensive bilateral anoxic brain injury as well as acute compressive hydrocephalus. Family is en route to the hospital to discuss MR findings and decide upon ventriculostomy.

Extensive global CVA:

- Neurosurg consulted for possible ventriculostomy given compressive hydrocephalus
- Neurology consulted as well given findings.
- Decreased neuro exam today, no longer responsive pupils
- Maintaining hypernatremia, head of bed elevated, considering for ventriculostomy
- All sedation remains held
- NSE pending.
- EEG was neg for subclinical status
- Remains unresponsive.

Resolving shock with Multiorgan Dysfunction:

- Supportive hemodynamics, TTE shows right sided dysfunction, holding boluses
- Renal function improving with downtrending creatinine and increased UOP
- Liver enzymes also downtrending. NAC protocol stopped 2 days ago.

Rhabdomyolysis: Rebounded slightly today along with AST. Creatinine remains downtrending

Anemia: H&H stable. Remains on acid suppression

ATN: Improving. Cr downtrending

Prophylaxis: PPI, SCD's

Code Status: DNR

Davidson x4099

Pulmonary Attending

I reviewed and examined Mr McCollum with Dr. Davidson and I concur with the findings and plans recorded. His pupils are unreactive. CT shows diffuse brain edema and obstructive hydrocephalus from 4th ventricle compression. This was not present on first 2 scans. Prognosis remains very poor even with ventriculostomy. Family to decide about withdrawal of care. Not extubation candidate unless we opt for comfort care.

Lance Terada, MD

Electronically Signed by Lance S. Terada, MD at 07/28/11 1541

Progress Notes signed by Hai Chen, MD,PHD at 07/28/11 1543

Author: Hai Chen, MD,PHD

Service: Neurology

Author Type: PGY 2

Filed: 07/28/11 1543

Note Time: 07/28/11 1542

Mon Sep 12, 2011 4:08 PM

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Patient Name: McCollum, Larry Gene (MRN: 4493765)

All Notes (continued)

Discussed with primary team Dr. Davidson. Family wishes to withdraw care. Consult cancelled.
Call with any additional Qs.

Electronically Signed by Hai Chen, MD,PHD at 07/28/11 1543

Progress Notes signed by Ana Marie Wilson at 07/28/11 1811

Author: Ana Marie Wilson	Service: (none)	Author Type: Pastoral Care
Filed: 07/28/11 1811	Note Time: 07/28/11 1809	

Spiritual Care Note

Patient's Name: Larry Gene McCollum
MRN: 4493765

Focus of Care: Family Member(s)

Helped other chaplain during withdraw of support and answering questions for the family regarding autopsy and jail involvement/payment from here. Officer Sessions stated the family would only be responsible for the funeral home/burial expenses.

Faith Community: Baptist
Who Initiated Visit: Chaplain

Length of Contact: 35 min
Response Category: Urgent

Reason For Visit: End of Life Care

Assessment: Religious/Spiritual Support

Goals: Experience Supportive Presence

Plan of Care:

Follow Up Required?: Yes

A. Follow Up Time Frame: Other (Comment) (through the dying process)

B. Interventions: Supportive Dialogue/Empathic Listening; Grief Facilitation/Education

Electronically signed by:

Ana Marie Wilson
7/28/2011 1809

Electronically Signed by Ana Marie Wilson at 07/28/11 1811

Progress Notes signed by Kevin Ross Davidson, MD at 07/28/11 1908

Author: Kevin Ross Davidson, MD	Service: Pulmonary Diseases	Author Type: PGY 3
Filed: 07/28/11 1908	Note Time: 07/28/11 1824	
Related Original Note by: Kevin Ross Davidson, MD filed at 07/28/11 1825		
Notes:		

Brief MICU Note:

Patient extubated in accordance with family and patient's own prior wishes. He is on morphine GTT titrated to air hunger

Mon Sep 12, 2011 4:08 PM

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Patient Name: McCollum, Larry Gene (MRN: 4493765)

All Notes (continued)

and signs of any suffering. Transfer orders are in place for a private room outside of the MICU.

Davidson x4099

Electronically Signed by Kevin Ross Davidson, MD at 07/28/11 1908

Nurses Notes signed by Tina Marie Harris, RN at 07/28/11 1924

Author: Tina Marie Harris, RN Service: (none) Author Type: Registered Nurse
 Filed: 07/28/11 1924 Note Time: 07/28/11 0911
 Related Original Note by: Tina Marie Harris, RN filed at 07/28/11 1810
 Notes:

July 28, 2011, 0911

0800 Is unresponsive. See flowsheet for complete assessment. POC reviewed. No changes made. Is unresponsive. No family at bedside. No nonverbal indicators of pain.

July 28, 2011, 1224

1200 No changes in assessment. No nonverbal indicators of pain.

July 28, 2011, 1653

1500 Family in conference room with Dr. Davidson discussing plan of care.

1600 Family wishes to withdraw care when other family members arrive. Pupils are nonreactive. No other changes in assessment. No nonverbal indicators of pain.

July 28, 2011, 1710

1708 Morphine 4 mg IV given. PCA morphine gtt started at 5 mg/h. Family at bedside.

July 28, 2011, 1730

1724 ETT pulled (care withdrawn) by Dr. Davidson. Family at bedside.

July 28, 2011, 1809

1800 Okay per Dr. Davidson to not get BP. Family at bedside praying. Is comfort care only. Transfer to floor orders written.

July 28, 2011, 1923

1920 VS stable. Report given to oncoming RN.

Electronically Signed by Tina Marie Harris, RN at 07/28/11 1924

Progress Notes signed by Charles Taylor Owens, MD at 07/28/11 2356

Author: Charles Taylor Owens, MD Service: Internal Medicine Author Type: PGY 3
 Filed: 07/28/11 2356 Note Time: 07/28/11 2356

Death Note:

This entry is clinical documentation by Charles Taylor Owens, MD regarding Patient Larry Gene McCollum, 4493765. Mr. McCollum was examined by me and has no detectable pulse, blood pressure, respirations, gag and corneal reflexes are absent and is deceased. The time of death was recorded at 11:35 pm on 7/28/2011

The time of this examination is 2356 on 7/28/2011.

The Family has/have been notified.

Electronically Signed by:

Charles Taylor Owens, MD

Electronically Signed by Charles Taylor Owens, MD at 07/28/11 2356

State Bar No. 24014406
Lead Counsel

/s/Scott Medlock

Scott Medlock
State Bar No. 24044783
James C. Harrington
State Bar No. 09048500
Wayne Krause
State Bar No. 24032644

TEXAS CIVIL RIGHTS PROJECT
1405 Montopolis Drive
Austin, TX 78741
(512) 474-5073 [phone]
(512) 474-0726 [fax]

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I certify that on November 2, 2012, I sent the foregoing to Defendants' counsel, Bruce Garcia, PO Box 12548, Capitol Station, Austin, TX 78711 via CMRRR 7011 2000 0002 6120 0590.

/s/ Scott Medlock
Scott Medlock

ORAL DEPOSITION OF STEPHANIE KINGREY

1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

STEPHEN MCCOLLUM, et al,)
 Plaintiffs,)
)
V.) C.A. No. 3:12-CV-02037
)
)
BRAD LIVINGSTON, et al,)
 Defendants.)

ORAL DEPOSITION OF
STEPHANIE KINGREY
November 22, 2013

ORAL DEPOSITION OF STEPHANIE KINGREY, produced as a witness at the instance of the Defendant University of Texas Medical Branch and duly sworn, was taken in the above-styled and numbered cause on the 22nd of November, 2013, from 12:09 p.m. to 3:25 p.m., before DEBRA L. MCGREW, CSR in and for the State of Texas, reported by machine shorthand at the offices of Edwards Law, 1101 E. 11th Street, Austin, Texas, pursuant to the Federal Rules of Civil Procedure.

ORAL DEPOSITION OF STEPHANIE KINGREY

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APPEARANCES

FOR THE PLAINTIFFS:

Mr. Scott Medlock
Edwards Law
1101 E. 11th Street
Austin, Texas 78702
Phone: 512-623-7727

FOR THE DEFENDANT UNIVERSITY OF TEXAS MEDICAL BRANCH:

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Ms. Shanna Elizabeth Molinare
Assistant Attorney General
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Austin, Texas 78711-2548
Phone: 512-463-2080

FOR THE DEFENDANTS TEXAS DEPARTMENT OF CRIMINAL JUSTICE,
ROBERT EASON AND JEFF PRINGLE:

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Assistant Attorney General
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Austin, Texas 78711-2548
Phone: 512-463-2080

FOR THE DEFENDANTS BRAD LIVINGSTON, RICK THALER AND
BILL STEPHENS:
Mr. Kyle M. Smith
Assistant Attorney General
P.O. Box 12548
Austin, Texas 78711-2548
Phone: 512-463-2080

ALSO PRESENT:
Jennifer Osteen
Sandra Sue McCollum
Stephen Michael McCollum

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STEPHANIE KINGREY,
having been first duly sworn, testified as follows:

EXAMINATION

BY MS. COOGAN:

Q. Can you please state your full name for the
record?

A. Stephanie Jo Kingrey.

Q. And where do you live?

A. West, Texas.

Q. Oh, my goodness.
And are you married?

A. Yes.

Q. What is your husband's name?

A. Jason.

Q. What's his last name?

A. Kingrey.

Q. Can you spell that for us?

A. J-A-S-O-N K-I-N-G-R-E-Y.

Q. What's your street address there in West?

A.

Q. And your social security number?

A.

Q. Date of birth?

A.

Q. How long have you been married?

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EXHIBITS

NO. DESCRIPTION PAGE

1 5
Six Photographs Labeled A, B, D, D, E, F
2 42
Handwritten Notes

3 43
Photograph of Davalene Lying Under Table
4 43
Photograph of Brain Scan

5 52
Photograph of Stephanie and Father
6 52
Photograph of Stephanie's Parents and Brother

7 52
Senior Photograph of Stephanie's Father
8 52
Photograph of Stephanie's Father and Sandra
at WinStar Entrance

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A. 13 years.

MR. MEDLOCK: Counsel, just to make sure,
we'll have the same agreement about redacting the social
security number.

MS. COOGAN: Absolutely. And what I'd
like to do on that regard is just have the court
reporter print it out regular and then, if for some
reason, those -- those depositions were to be used or
leave the office, redact them at that point.

MR. MEDLOCK: That sounds fine to me.

Q. (BY MS. COOGAN) And what year did you get
married? You said 13 years?

A. Uh-huh. 2000.

Q. Do you have any children?

A. We have two kids.

Q. And how old are they?

A. Shelbi is 12, and Lexi is fixing to turn 11.
(Exhibit 1 marked).

Q. (BY MS. COOGAN) Let me show you what's been
marked as Exhibit 1 and ask you to identify who those
people are.

A. This is my daughter, Shelbi --

Q. Let me interrupt you for a second. What I'm
going to do is say A, B, C, D -- okay.
Exhibit 1, Photograph A, who is that?

ORAL DEPOSITION OF STEPHANIE KINGREY

<p style="text-align: right;">6</p> <p>1 A. My daughter Shelbi, S-H-E-L-B-I.</p> <p>2 Q. Anybody else in that picture?</p> <p>3 A. Shrek.</p> <p>4 Q. Shrek. Okay.</p> <p>5 How about Picture B?</p> <p>6 A. Picture B is also Shelbi.</p> <p>7 Q. C?</p> <p>8 A. My husband Jason, myself, Shelbi and Lexi,</p> <p>9 L-E-X-I.</p> <p>10 Q. D?</p> <p>11 A. D is my brother, Steve, and his first wife,</p> <p>12 Nicole.</p> <p>13 Q. E?</p> <p>14 A. E is my daughter Shelbi, my daughter Lexi and</p> <p>15 my niece Hailey.</p> <p>16 Q. And F?</p> <p>17 A. My husband, myself and Shelbi.</p> <p>18 Q. What is your understanding of where the</p> <p>19 photographs in Exhibit A came from?</p> <p>20 A. My father's wallet.</p> <p>21 Q. What is your mother's name?</p> <p>22 A. Brenda Atteberry.</p> <p>23 Q. And was your father married anytime in addition</p> <p>24 to -- to your mother and to Sandra McCollum?</p> <p>25 A. No.</p>	<p style="text-align: right;">8</p> <p>1 Q. When you -- when -- okay. When you and your</p> <p>2 brother and your parents were married, where did you</p> <p>3 live?</p> <p>4 A. We lived in Waco.</p> <p>5 Q. Do you remember the street address?</p> <p>6 A. McKenzie, I believe.</p> <p>7 Q. Do you remember if that house had</p> <p>8 air-conditioning?</p> <p>9 A. Yes.</p> <p>10 Q. Yes, you remember?</p> <p>11 A. Yes, I remember it did.</p> <p>12 Q. And did you ever live anywhere else with both</p> <p>13 of your parents?</p> <p>14 A. Yes.</p> <p>15 Q. Where?</p> <p>16 A. China Spring.</p> <p>17 Q. Do you remember the street address?</p> <p>18 A. No.</p> <p>19 Q. Do you remember if that house had</p> <p>20 air-conditioning?</p> <p>21 A. Yes, it did.</p> <p>22 Q. Did you ever work -- live anywhere else with</p> <p>23 them?</p> <p>24 A. Not that I can recall.</p> <p>25 Q. And when your parents divorced and you and your</p>
<p style="text-align: right;">7</p> <p>1 Q. Tell me who your siblings are.</p> <p>2 A. My brother, Stephen.</p> <p>3 Q. Is he your only biological sibling?</p> <p>4 A. Yes, ma'am.</p> <p>5 Q. Did your father adopt any children?</p> <p>6 A. No.</p> <p>7 Q. And are you pretty sure he doesn't have any</p> <p>8 other biological children out there?</p> <p>9 A. Yes.</p> <p>10 Q. How long were your parents married?</p> <p>11 A. I think around 16 years.</p> <p>12 Q. Did they ever formally divorce, as far as you</p> <p>13 know?</p> <p>14 A. Yes.</p> <p>15 Q. Do you recall what year that would have been?</p> <p>16 A. No.</p> <p>17 Q. How old were you at that time?</p> <p>18 A. I was six.</p> <p>19 Q. And where did you go -- who did you live with?</p> <p>20 A. My mother.</p> <p>21 Q. And did your brother do that as well?</p> <p>22 A. Yes.</p> <p>23 Q. And what -- where did your father go to live at</p> <p>24 that time, when your parents divorced?</p> <p>25 A. With his parents.</p>	<p style="text-align: right;">9</p> <p>1 brother lived with your mom, do you remember where you</p> <p>2 lived?</p> <p>3 A. Mostly in Waco.</p> <p>4 Q. Did your mom own a home?</p> <p>5 A. No.</p> <p>6 Q. And tell me, to the extent that you can, where</p> <p>7 you lived in Waco.</p> <p>8 A. There was a lot. I don't recall all of the</p> <p>9 addresses.</p> <p>10 Q. Was there any one particular place where you</p> <p>11 lived for the longest or that you consider your</p> <p>12 childhood home?</p> <p>13 A. We lived with my grandparents for a while, her</p> <p>14 parents.</p> <p>15 Q. And what were their names?</p> <p>16 A. Mary and Elmer Donaldson.</p> <p>17 Q. And did that home have air-conditioning?</p> <p>18 A. Yes.</p> <p>19 Q. Where did you go to high school?</p> <p>20 A. I went to Midway High School and Riesel High</p> <p>21 School.</p> <p>22 Q. And where -- can you spell the second one?</p> <p>23 A. R-I-E-S-E-L.</p> <p>24 Q. Where is that?</p> <p>25 A. Right outside of Waco.</p>

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<p style="text-align: right;">10</p> <p>1 Q. In Midway?</p> <p>2 A. Midway is in Hewitt, which is outside of Waco.</p> <p>3 Q. Did you graduate from high school?</p> <p>4 A. Yes.</p> <p>5 Q. Did you go to any college?</p> <p>6 A. In 2006 I took some classes at MCC.</p> <p>7 Q. Did you ever complete a college degree?</p> <p>8 A. No.</p> <p>9 Q. What do you do for a living?</p> <p>10 A. I am a accounts payable clerk.</p> <p>11 Q. For whom?</p> <p>12 A. Equipment Depot.</p> <p>13 Q. And how long have you been doing that?</p> <p>14 A. Two years.</p> <p>15 Q. What did you do before that?</p> <p>16 A. I worked at Automatic Chef.</p> <p>17 Q. And what did you do for them?</p> <p>18 A. Office clerk for two and a half years.</p> <p>19 Q. And let's go back one more prior to that.</p> <p>20 A. Safety-Kleen, K-L-E-E-N. I worked there for,</p> <p>21 all together, 12 years.</p> <p>22 Q. Okay. And what is your husband's name?</p> <p>23 A. Jason.</p> <p>24 Q. What does he do for a living?</p> <p>25 A. He's an auto body paint technician.</p>	<p style="text-align: right;">12</p> <p>1 A. I can't remember the name.</p> <p>2 Q. Okay. Where did your father go and live when</p> <p>3 your parents divorced?</p> <p>4 A. With his parents.</p> <p>5 Q. And -- and I'm sorry. Did you tell me their</p> <p>6 name or no?</p> <p>7 A. No.</p> <p>8 Q. What is -- what are their names?</p> <p>9 A. Charles and Margaret.</p> <p>10 Q. McCollum?</p> <p>11 A. McCollum.</p> <p>12 Q. And in what city did they live?</p> <p>13 A. Bellmead.</p> <p>14 Q. Have they since passed?</p> <p>15 A. Yes.</p> <p>16 Q. Did their home have air-conditioning?</p> <p>17 A. Yes.</p> <p>18 Q. And when you were growing up, what was your</p> <p>19 understanding of what your father did for a living?</p> <p>20 A. He did not work when I was growing up.</p> <p>21 Q. Do you know why?</p> <p>22 A. He took care of his parents.</p> <p>23 Q. What was wrong with them?</p> <p>24 A. They were just older, so he -- he just took</p> <p>25 care of them.</p>
<p style="text-align: right;">11</p> <p>1 Q. And where does he work?</p> <p>2 A. Currently at Sykora's in West, S-Y-K-O-R-A-S.</p> <p>3 Q. Good job.</p> <p>4 And how long has he been doing that kind</p> <p>5 of work?</p> <p>6 A. Since he was 15.</p> <p>7 Q. Do they have air-conditioning at his shop?</p> <p>8 A. Yes.</p> <p>9 Q. Did your mom work outside the home when you</p> <p>10 were growing up?</p> <p>11 A. Yes.</p> <p>12 Q. What did she do?</p> <p>13 A. She was an office clerk and then she became</p> <p>14 a -- a legal assistant.</p> <p>15 Q. Do you know who she worked for?</p> <p>16 A. Naman, Howell, Smith & Lee.</p> <p>17 Q. Oh, my. I know a lot of people that work</p> <p>18 there.</p> <p>19 Is she still living?</p> <p>20 A. Yes.</p> <p>21 Q. Does she still work?</p> <p>22 A. Yes.</p> <p>23 Q. For Naman Howell?</p> <p>24 A. No.</p> <p>25 Q. Who does she work for now?</p>	<p style="text-align: right;">13</p> <p>1 Q. And when is the first time you recall your</p> <p>2 father ever working?</p> <p>3 A. When he was married to my mother, he worked for</p> <p>4 Dr. Pepper.</p> <p>5 Q. Do you remember what he did for them?</p> <p>6 A. He was a driver.</p> <p>7 Q. Okay. And at some point did -- he stopped</p> <p>8 working for Dr. Pepper, I guess?</p> <p>9 A. Yes. I don't remember when.</p> <p>10 Q. When did his parents pass?</p> <p>11 A. My grandmother passed in 2002, I believe, and</p> <p>12 my grandpa passed in 2003.</p> <p>13 Q. And when they passed away, did -- did your</p> <p>14 father begin working again?</p> <p>15 A. No.</p> <p>16 Q. What is your understanding of why not?</p> <p>17 A. I don't know.</p> <p>18 Q. What is your recollection of the next time that</p> <p>19 your dad actually worked?</p> <p>20 A. For the Yellow Cab company.</p> <p>21 Q. And when do you think, ballpark, he started</p> <p>22 doing that?</p> <p>23 A. Around 2008 or 2009.</p> <p>24 Q. Well, did you ever ask your dad why he didn't</p> <p>25 work?</p>

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<p style="text-align: right;">26</p> <p>1 whether -- what kind of financial burden your dad might</p> <p>2 have been on him?</p> <p>3 A. No.</p> <p>4 Q. Did you ever give any money to your Uncle Terry</p> <p>5 to sort of help pay for your dad's food or lodging?</p> <p>6 A. That's when I gave him the hundred dollars to</p> <p>7 help out.</p> <p>8 Q. Do you think that's -- that hundred dollars was</p> <p>9 the only financial contribution that you made for your</p> <p>10 dad's --</p> <p>11 A. That I can remember.</p> <p>12 Q. Up until the time he died?</p> <p>13 A. Right.</p> <p>14 Q. Did you ever take your dad any clothing or buy</p> <p>15 him a car or anything like that?</p> <p>16 A. He still had his clothing from when he lived</p> <p>17 with his parents.</p> <p>18 Q. And so you didn't buy him any clothing because</p> <p>19 he didn't need any clothes?</p> <p>20 A. Right.</p> <p>21 Q. What about an automobile, gas money?</p> <p>22 A. No.</p> <p>23 Q. How come?</p> <p>24 A. Because he didn't drive.</p> <p>25 Q. And so you had no idea how he could care for</p>	<p style="text-align: right;">28</p> <p>1 A. I believe he was in the hospital there for a</p> <p>2 while.</p> <p>3 Q. What -- what kind of hospital?</p> <p>4 A. Whatever's associated with Bonham. I'm not --</p> <p>5 I'm not sure.</p> <p>6 Q. Do you know whether he ever was admitted to a</p> <p>7 psychiatric hospital?</p> <p>8 A. Not unless that was a psychiatric hospital. I</p> <p>9 don't know. He just told me he went into the hospital.</p> <p>10 Q. Are you aware of whether your father ever spent</p> <p>11 any time admitted in a psychiatric hospital?</p> <p>12 A. No.</p> <p>13 Q. That would be news to you?</p> <p>14 A. Yes.</p> <p>15 Q. As far as you know, did your dad ever suffer</p> <p>16 from depression or any other psychiatric problems?</p> <p>17 A. After my grandparents died, he was depressed.</p> <p>18 Q. Okay. Let me -- let me just ask you questions</p> <p>19 about after his first incarceration. So after he was</p> <p>20 released from prison the first time, are you aware of</p> <p>21 him ever being on any medications for any psychiatric</p> <p>22 problems?</p> <p>23 A. No.</p> <p>24 Q. Are you aware of him ever being depressed at</p> <p>25 that point?</p>
<p style="text-align: right;">27</p> <p>1 himself financially and didn't ask?</p> <p>2 A. Right.</p> <p>3 Q. Did you -- did you become aware -- did he ever</p> <p>4 become homeless?</p> <p>5 A. No. Well, right after my grandparents died, I</p> <p>6 guess you could say he was but --</p> <p>7 Q. After he got out of Bonham but before he went</p> <p>8 to prison at Hutchins, is it your understanding he lived</p> <p>9 with your Uncle Terry that whole time?</p> <p>10 A. Right. He stayed with me a few nights, also.</p> <p>11 Q. But basically just lived with your Uncle Terry?</p> <p>12 A. Uh-huh, yes.</p> <p>13 Q. And so if he was ever homeless, it's not</p> <p>14 something that you were aware of?</p> <p>15 A. Right.</p> <p>16 Q. Did you ever talk to him about whether he had</p> <p>17 any psychological problems while he was at Bonham?</p> <p>18 A. No.</p> <p>19 Q. Psychiatric problems?</p> <p>20 A. Not that I remember.</p> <p>21 Q. Do you know whether he was discharged from</p> <p>22 Bonham -- let me ask you this.</p> <p>23 Do you know whether he was ever</p> <p>24 transferred to a different facility, during that first</p> <p>25 incarceration, from Bonham to somewhere else?</p>	<p style="text-align: right;">29</p> <p>1 A. Not at that point, no.</p> <p>2 Q. As far as you know, did he ever take any</p> <p>3 medications for diabetes?</p> <p>4 A. Not that I know of.</p> <p>5 Q. Do you know -- are you aware of him ever being</p> <p>6 diagnosed with diabetes?</p> <p>7 A. He told me before he went in to Waco that he</p> <p>8 was a diabetic.</p> <p>9 Q. And was that a surprise to you?</p> <p>10 A. No, because it runs in the family.</p> <p>11 Q. Okay. And did you ask him whether he was</p> <p>12 taking any medication for that?</p> <p>13 A. No.</p> <p>14 Q. Did you have any concerns about how he might</p> <p>15 pay for medication for that diabetes?</p> <p>16 A. My guess?</p> <p>17 Q. Uh-huh.</p> <p>18 A. Yeah.</p> <p>19 Q. I'm sorry?</p> <p>20 A. Yes.</p> <p>21 Q. You --</p> <p>22 A. I didn't know how he would pay for it if he had</p> <p>23 to.</p> <p>24 Q. Okay. And did you ever ask him, Hey, Dad,</p> <p>25 you're not working, how are you paying for your diabetes</p>

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<p style="text-align: right;">30</p> <p>1 medication?</p> <p>2 A. I'm not aware of him being on any medication</p> <p>3 so --</p> <p>4 Q. Okay.</p> <p>5 A. -- I don't know.</p> <p>6 Q. Did you ever ask him about it?</p> <p>7 A. No.</p> <p>8 Q. What did y'all talk about?</p> <p>9 A. My kids.</p> <p>10 Q. Do you know whether he was ever diagnosed with</p> <p>11 high blood pressure?</p> <p>12 A. Not that I'm aware of.</p> <p>13 Q. And are you aware of him ever taking any</p> <p>14 medication for high blood pressure?</p> <p>15 A. No.</p> <p>16 Q. Did you ever call any State services and ask</p> <p>17 for help on your dad's behalf?</p> <p>18 A. No.</p> <p>19 Q. What about MHMR in McLennan County?</p> <p>20 A. No.</p> <p>21 Q. Does he have -- does your father have any</p> <p>22 daughters besides you?</p> <p>23 A. No.</p> <p>24 Q. Did you ever become aware of whether your dad</p> <p>25 had any hallucinations relating either to mental illness</p>	<p style="text-align: right;">32</p> <p>1 Q. So he didn't just live with your Uncle Terry</p> <p>2 the whole time?</p> <p>3 A. After he got out of the program, he moved in</p> <p>4 with her.</p> <p>5 Q. Okay. Well, let's back up a little bit, then.</p> <p>6 So he gets out of prison the first time</p> <p>7 and he goes to the ministry program, right?</p> <p>8 A. He lived with Terry before we -- we took him</p> <p>9 there.</p> <p>10 Q. Okay. So he got out of the prison, moved in</p> <p>11 with Terry, right?</p> <p>12 A. Uh-huh, yes.</p> <p>13 Q. And then what happened that caused him to leave</p> <p>14 Terry's and move into the program?</p> <p>15 A. We needed to find a program to get him back on</p> <p>16 his feet --</p> <p>17 Q. What do you mean?</p> <p>18 A. -- and that was the closest place.</p> <p>19 Q. Okay. What -- what did you think they were</p> <p>20 going to offer him to help him get back on his feet?</p> <p>21 A. A job. I mean they helped him look for a job</p> <p>22 and gave him a place to stay and was -- I mean it was</p> <p>23 good for him because it was a ministry so --</p> <p>24 Q. Okay. Was there any other ministry services</p> <p>25 that they offered him?</p>
<p style="text-align: right;">31</p> <p>1 or to medications?</p> <p>2 A. No.</p> <p>3 Q. Who is Sandra Holder?</p> <p>4 A. I believe that was a lady he was dating before</p> <p>5 his wife, Sandra.</p> <p>6 Q. Okay. Do you think he dated Sandra Holder</p> <p>7 after he got out of Bonham but before he went to</p> <p>8 Hutchins?</p> <p>9 A. Yes.</p> <p>10 Q. What makes you think that?</p> <p>11 A. Because I met her.</p> <p>12 Q. Okay. So you're pretty sure that's who she</p> <p>13 was?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And where -- did they ever live</p> <p>16 together?</p> <p>17 A. I believe so.</p> <p>18 Q. At her home --</p> <p>19 A. Yes.</p> <p>20 Q. -- or at Terry's home?</p> <p>21 A. At hers.</p> <p>22 Q. Do you know where she lived?</p> <p>23 A. Fort Worth.</p> <p>24 Q. So did he move to Fort Worth during that time?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">33</p> <p>1 A. No.</p> <p>2 Q. I -- what I'm really trying to -- one of the</p> <p>3 things I'm trying to ask is: Why did he have to move</p> <p>4 out of your Uncle Terry's house just to look for a job?</p> <p>5 A. At that time, I mean, they had, you know, done</p> <p>6 all they could for him, so they decided he needed to</p> <p>7 start looking for a job.</p> <p>8 Q. They, the ministry or, they, your Uncle Terry?</p> <p>9 A. My Uncle Terry.</p> <p>10 Q. Did he and your dad have some kind of a falling</p> <p>11 out or argument?</p> <p>12 A. No. My dad was ready to start looking for a</p> <p>13 job, also.</p> <p>14 Q. Okay. So how long did he live at the ministry?</p> <p>15 A. He went through the whole program, so I don't</p> <p>16 know how long that took. About a year, maybe.</p> <p>17 Q. And he finished with the program, and then</p> <p>18 where he go live?</p> <p>19 A. Salvation Army. He went through that program</p> <p>20 as well.</p> <p>21 Q. So there were two different programs?</p> <p>22 A. Yes.</p> <p>23 Q. And during -- and do you know how long the</p> <p>24 Salvation Army program was?</p> <p>25 A. I believe it was also about a year.</p>

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<p style="text-align: right;">54</p> <p>1 A. We already have.</p> <p>2 Q. Okay. I'm almost done. Sorry. Hang on.</p> <p>3 (Discussion off the record).</p> <p>4 Q. (BY MS. COOGAN) Do you know how much money</p> <p>5 your dad made working for Yellow Cab?</p> <p>6 A. No.</p> <p>7 Q. Do you know the name of your dad's primary care</p> <p>8 physician?</p> <p>9 A. No.</p> <p>10 Q. Do you know the name of any of the doctors that</p> <p>11 might have seen or treated your dad in, let's say,</p> <p>12 the years in between Bonham and Hutchins?</p> <p>13 A. If anybody, it would have been Hillcrest.</p> <p>14 Q. And probably the emergency room?</p> <p>15 A. Or one of their clinics.</p> <p>16 Q. Okay. But in the Hillcrest system?</p> <p>17 A. Yes.</p> <p>18 Q. What makes you say that?</p> <p>19 A. Because they're all tied together.</p> <p>20 Q. And that was sort of his place of choice?</p> <p>21 A. Right.</p> <p>22 Q. Did you ever make any request for records under</p> <p>23 the Open Records Act, do you know?</p> <p>24 A. Not that I'm aware of.</p> <p>25 Q. Did you consider your dad to be disabled?</p>	<p style="text-align: right;">56</p> <p>1 A. 2010. We just did the deposition, though, a</p> <p>2 few weeks ago.</p> <p>3 Q. Okay. So you've already kind of got a little</p> <p>4 bit of experience going through this, especially</p> <p>5 recently, right?</p> <p>6 A. Uh-huh, yes.</p> <p>7 Q. So you understand that you've sworn an oath to</p> <p>8 tell the truth today --</p> <p>9 A. Yes.</p> <p>10 Q. -- and that any testimony you give that's not</p> <p>11 honest you could be subject to sanctions for?</p> <p>12 A. Right, yes.</p> <p>13 Q. Consequences if you lie?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. You mentioned earlier in your</p> <p>16 testimony -- well, before I ask that -- strike that.</p> <p>17 Is there any testimony that you've given</p> <p>18 so far that you'd like to change right now --</p> <p>19 A. No.</p> <p>20 Q. -- during this deposition?</p> <p>21 No. Okay.</p> <p>22 You testified earlier that diabetes runs</p> <p>23 in your family, right?</p> <p>24 A. Yes.</p> <p>25 Q. Do you have diabetes?</p>
<p style="text-align: right;">55</p> <p>1 A. No.</p> <p>2 MS. COOGAN: I'm going to pass the</p> <p>3 witness.</p> <p>4 MR. STONE: Do you want to take lunch</p> <p>5 right now? Do you mind if we take a lunch break?</p> <p>6 MR. MEDLOCK: If that's what y'all would</p> <p>7 prefer.</p> <p>8 MS. COOGAN: Okay.</p> <p>9 (Lunch recess from 1:24 to 2:43).</p> <p>10 EXAMINATION</p> <p>11 BY MR. STONE:</p> <p>12 Q. Hi, Ms. McCollum.</p> <p>13 A. Hello.</p> <p>14 Q. Do you understand that you're under oath today?</p> <p>15 A. Yes.</p> <p>16 Q. Is this your first deposition?</p> <p>17 A. No.</p> <p>18 Q. How many depositions have you participated in</p> <p>19 before?</p> <p>20 A. One other.</p> <p>21 Q. What was that deposition about?</p> <p>22 A. The wreck my dad was in.</p> <p>23 Q. And when was that?</p> <p>24 A. When was --</p> <p>25 Q. What year was that?</p>	<p style="text-align: right;">57</p> <p>1 A. No.</p> <p>2 Q. Do your children have diabetes?</p> <p>3 A. No.</p> <p>4 Q. Do your siblings, to your knowledge, have</p> <p>5 diabetes?</p> <p>6 A. No.</p> <p>7 Q. Did your grandparents have diabetes?</p> <p>8 A. My grandfather did, yes.</p> <p>9 Q. Okay. Did your great --</p> <p>10 A. And my uncle does.</p> <p>11 Q. And your uncle.</p> <p>12 Do you know of anyone else in the family</p> <p>13 who has diabetes?</p> <p>14 A. No.</p> <p>15 Q. Have you ever been tested for diabetes?</p> <p>16 A. Yes.</p> <p>17 Q. Is that because you know that it runs in the</p> <p>18 family?</p> <p>19 A. Yes.</p> <p>20 Q. Do you know if your father was ever tested for</p> <p>21 diabetes?</p> <p>22 A. Not to my knowledge, not that I know of.</p> <p>23 Q. Did you ever have conversations with him about</p> <p>24 the fact that diabetes runs in the family?</p> <p>25 A. Yes.</p>

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<p style="text-align: right;">58</p> <p>1 Q. What did he say? Do you remember?</p> <p>2 A. He just -- you know, he's the one that told me</p> <p>3 that my grandpa had it and that my uncle did.</p> <p>4 Q. So he was aware that there was a family history</p> <p>5 of diabetes?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Something that you would expect him to</p> <p>8 get tested for?</p> <p>9 A. Right.</p> <p>10 Q. What about a history of alcoholism? Is there a</p> <p>11 history of alcoholism in your family?</p> <p>12 A. I mean, my dad was when he was married to my</p> <p>13 mother.</p> <p>14 Q. Is there anyone else in your family that's an</p> <p>15 alcoholic?</p> <p>16 A. Not that I know of.</p> <p>17 Q. Okay. What about mental illness? Are you</p> <p>18 aware if that runs in the family?</p> <p>19 A. Not that I know of.</p> <p>20 Q. Okay. Do you smoke?</p> <p>21 A. No.</p> <p>22 Q. Does your husband smoke?</p> <p>23 A. No.</p> <p>24 Q. Have you ever seen your father smoke?</p> <p>25 A. No.</p>	<p style="text-align: right;">60</p> <p>1 picture of the bottle.</p> <p>2 It's B-U-S-P-I-R-O-N-E.</p> <p>3 Q. Can you spell it one more time?</p> <p>4 A. B-U-S-P-I-R-O-N-E.</p> <p>5 Q. Okay. And do you have any reason to believe</p> <p>6 that that would interfere with your ability to testify</p> <p>7 today?</p> <p>8 A. No.</p> <p>9 Q. And you started taking that as of when, what</p> <p>10 date?</p> <p>11 A. November 6th.</p> <p>12 Q. Are you aware of anyone else in your family</p> <p>13 that's been diagnosed with a mental illness?</p> <p>14 A. Not that -- not to my knowledge, no.</p> <p>15 Q. Just you and your father?</p> <p>16 A. Right.</p> <p>17 Q. Do you know if your father was taking any</p> <p>18 medications during any of the time period that you knew</p> <p>19 him?</p> <p>20 A. Not that I know of.</p> <p>21 Q. You never saw your father take any</p> <p>22 medication --</p> <p>23 A. No.</p> <p>24 Q. -- ever?</p> <p>25 A. An aspirin every now and then, but I never saw</p>
<p style="text-align: right;">59</p> <p>1 Q. Have you ever seen your stepmother, Sandra,</p> <p>2 smoke?</p> <p>3 A. No.</p> <p>4 Q. Do you have -- have you ever been diagnosed</p> <p>5 with a mental illness?</p> <p>6 A. Depression.</p> <p>7 Q. When?</p> <p>8 A. In 2003 and then again whenever I started going</p> <p>9 to the counselor. She put me on depression medicine.</p> <p>10 Q. And when was that?</p> <p>11 A. November 6th or 8th. I can't remember.</p> <p>12 Q. Of 2013?</p> <p>13 A. Yes.</p> <p>14 Q. And how long were you treated for depression</p> <p>15 beginning in 2003?</p> <p>16 A. A few months.</p> <p>17 Q. Was that because of the death of your</p> <p>18 grandparents?</p> <p>19 A. No. It was -- my best friend was murdered by</p> <p>20 her husband.</p> <p>21 Q. Are you currently taking any medication to</p> <p>22 treat mental illness?</p> <p>23 A. Yes.</p> <p>24 Q. And what are you taking now?</p> <p>25 A. I don't remember the name of it. I took a</p>	<p style="text-align: right;">61</p> <p>1 anything other than that.</p> <p>2 Q. I want to ask you a couple questions about the</p> <p>3 living arrangements that your father made when he came</p> <p>4 out of prison before he went into the Hutchins unit.</p> <p>5 Okay?</p> <p>6 A. Okay.</p> <p>7 Q. You testified earlier that the reason you</p> <p>8 didn't want your father to live with you when he got out</p> <p>9 of jail was because everything was kind of hectic with</p> <p>10 the kids being young and there wasn't enough room for</p> <p>11 him --</p> <p>12 A. Right.</p> <p>13 Q. -- is that right?</p> <p>14 A. Yes.</p> <p>15 Q. Was -- was that the only reason you didn't want</p> <p>16 your father to live with you?</p> <p>17 A. Yes.</p> <p>18 Q. Did you discuss your father living with you</p> <p>19 with your husband?</p> <p>20 A. Yes.</p> <p>21 Q. Was your husband aware that your dad was a</p> <p>22 felon?</p> <p>23 A. Yes.</p> <p>24 Q. Was he aware that your father had been</p> <p>25 physically abusive to your mother?</p>

ORAL DEPOSITION OF STEPHANIE KINGREY

<p style="text-align: right;">90</p> <p>1 Q. What do you mean by that?</p> <p>2 A. My mom and I don't -- I mean we have a</p> <p>3 relationship, but it's not like a normal -- we have</p> <p>4 issues, too.</p> <p>5 Q. Why?</p> <p>6 A. Different things growing up.</p> <p>7 Q. A little bit of anger at both parents, not just</p> <p>8 him.</p> <p>9 A. Yes.</p> <p>10 MR. STONE: I'll pass the witness.</p> <p>11 EXAMINATION</p> <p>12 BY MR. SMITH:</p> <p>13 Q. Good afternoon, Ms. Kingrey. I just have a few</p> <p>14 more questions for you before we move on.</p> <p>15 You saw your father at the hospital after</p> <p>16 he was taken from the Hutchins unit; isn't that right?</p> <p>17 A. Yes.</p> <p>18 Q. When was the last time before then that you</p> <p>19 spoke with him?</p> <p>20 A. A couple of days before he went into Waco.</p> <p>21 Q. Okay. Do you recall what you talked about?</p> <p>22 A. We just talked about the kids and -- my kids</p> <p>23 and me and how everything was going and, of course, take</p> <p>24 care of ourselves while he was in and he'll see us when</p> <p>25 he gets out.</p>	<p style="text-align: right;">92</p> <p>1 Q. How about Rick Thaler? Do you know him or know</p> <p>2 his name?</p> <p>3 A. No.</p> <p>4 Q. And do you feel that he contributed to your</p> <p>5 father's death?</p> <p>6 A. I don't know him.</p> <p>7 Q. Is there anything you believe that these three</p> <p>8 individuals could have done to prevent your father's</p> <p>9 death?</p> <p>10 A. Again, I don't know who they are.</p> <p>11 MR. SMITH: Okay. I'll pass the witness.</p> <p>12 MS. COOGAN: I have nothing further.</p> <p>13 MR. MEDLOCK: We'll reserve for trial.</p> <p>14 (End of deposition).</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">91</p> <p>1 Q. Did he talk about his situation at all?</p> <p>2 A. He told me about what happened. That was about</p> <p>3 it.</p> <p>4 Q. Did he talk about prison life --</p> <p>5 A. No.</p> <p>6 Q. -- prison guards --</p> <p>7 A. No.</p> <p>8 Q. -- the warden, prison policies?</p> <p>9 A. No.</p> <p>10 Q. Are you familiar with the name Brad Livingston?</p> <p>11 A. Just from the case.</p> <p>12 Q. And what do you -- what do you know about him?</p> <p>13 A. I've just seen his name on the case. I don't</p> <p>14 know anything else.</p> <p>15 Q. Do you know his position within the Texas</p> <p>16 Department of Criminal Justice?</p> <p>17 A. I couldn't tell you what it is.</p> <p>18 Q. So do you feel that he contributed to your</p> <p>19 father's death?</p> <p>20 A. I don't know who he is, so I don't know.</p> <p>21 Q. Okay. What about the name William Stephens?</p> <p>22 A. I don't know who that is either.</p> <p>23 Q. So your answer would be the same, that you</p> <p>24 don't know if he contributed to your father's death?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">93</p> <p>1 CHANGES AND SIGNATURE</p> <p>2 WITNESS NAME: STEPHANIE KINGREY DATE: 11-22-13</p> <p>3 PAGE LINE CHANGE REASON</p> <p>4 _____</p> <p>5 _____</p> <p>6 _____</p> <p>7 _____</p> <p>8 _____</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 _____</p> <p>20 I, STEPHANIE KINGREY, have read the foregoing</p> <p>21 deposition and hereby affix my signature that same is</p> <p>22 true and correct, except as noted herein.</p> <p>23 _____</p> <p>24 STEPHANIE KINGREY</p> <p>25 Job No. 113925</p>

24 (Pages 90 to 93)

ORAL DEPOSITION OF STEPHANIE KINGREY

94

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE NORTHERN DISTRICT OF TEXAS
 3 DALLAS DIVISION
 4 STEPHEN MCCOLLUM, et al,)
 Plaintiffs,)
 5 V.) C.A. No. 3:12-CV-02037
 6 BRAD LIVINGSTON, et al,)
 Defendants.)

7
 8
 9 REPORTER'S CERTIFICATION
 10 ORAL DEPOSITION OF
 STEPHANIE KINGREY
 November 22, 2013

11
 12 I, Debra L. McGrew, Certified Shorthand
 13 Reporter in and for the State of Texas, hereby certify
 14 to the following:
 15 That the witness, STEPHANIE KINGREY, was duly
 16 sworn by the officer and that the transcript of the oral
 17 deposition is a true record of the testimony given by
 18 the witness;
 19 I further certify that pursuant to FRCP Rule
 20 30(f)(1) that the signature of the deponent:
 21 _____ was requested by the deponent or a party
 22 before the completion of the deposition and returned
 23 within 30 days from date of receipt of the transcript.
 24 If returned, the attached Changes and Signature page
 25 contains any changes and the reasons therefor;

95

1 _____X_____ was not requested by the deponent or a
 2 party before the completion of the deposition.
 3 I further certify that I am neither attorney
 4 nor counsel for, related to, nor employed by any of the
 5 parties to the action in which this testimony was taken.
 6 Further, I am not a relative or employee of any attorney
 7 of record in this case, nor am I financially or
 8 otherwise interested in the outcome of the action.
 9 Subscribed and sworn to on this the 9th day of
 10 December, 2013.

11
 12
 13
 14
 15 _____
 Debra L. McGrew, Texas CSR #1573
 Expiration Date: 12/31/2014
 Sunbelt Reporting & Litigation Services
 16 Firm Registration No. 87
 1016 La Posada Drive, Suite 294
 17 Austin, Texas 78752
 512-465-9100

18 Job No. 113925
 19
 20
 21
 22
 23
 24
 25

25 (Pages 94 to 95)

Page 1 of 1

From: Babbili, Ananda D.
Sent: Thursday, February 23, 2012 2:25 PM
To: Jamison, Gizelle A.
Subject: RE: #1721640-McCollum,Larry

Good afternoon,

This is in response to the concerns brought up by the Physicians Peer Review Comm.
Mr.LM arrived at Hutchins Jail on 7/15/11.

He intake process was conducted on arrival back door by nursing staff around 12:30 pm on 7/15/11.
He arrived with Clonidine from McLennan county, which was discontinued because unit does not routinely use this medication except in serious hypertensive crisis, and do not automatically continue until medical staff does the intake physical exam and initiate appropriate medication. pt. was given Hydrochlorothiazide (a routine process to discontinue county order for prn clonidine) and start using our formulary available medications.
Bp's were not ordered because his county medication order reflected clonidine given only as needed (if and when bp is high), and hctz given daily to stabilize bp, to avoid fluctuating readings, until intake completed by the medical staff.

The pt. unfortunately was not seen by any of our medical staff as the new arrivals have a routine initial security formalities, before all new intake pts. seen in medical on the 4th day.

I hope I answered all the concerns, and if you have any further questions, do not hesitate to get in touch with me at your earliest convenience

Thankyou,
andy Babbili PA-C

From: Jamison, Gizelle A.
Sent: Thursday, February 23, 2012 11:18 AM
To: Babbili, Ananda D.
Subject:

Hello: Please see the attached correspondence from UTMB CMC Physician Peer Review. Thank you.

Gizelle (Gigi) Jamison MPA, RN, LNC-Csp

Quality Services and Risk Management

UTMB - CMC

301 University Blvd.

Galveston, Texas 77511-1007

Work: 409-747-2715

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file:///C:/Users/josteen/AppData/Local/Microsoft/Windows/Temp... 3/17/2014

McCollum - 678

Appendix 360

AFFIDAVIT**THE STATE OF TEXAS**§
§
§**COUNTY OF WALKER**

BEFORE ME, the undersigned authority, personally appeared **Lisa Lopez**, who, being by me duly sworn, deposed as follows:

"My name is **Lisa Lopez**, and I am over the age of eighteen (18), of sound mind, competent and capable of making this affidavit, and personally acquainted with the facts herein stated:

I am the Custodian of Records at The University of Texas Medical Branch - Correctional Managed Care, Health Services Archives and my office is located in Huntsville, Texas. In this capacity, I am the individual who can authenticate and certify as official, copies of medical records at the **TDCJ Health Services Archives**. Attached hereto are **21** pages of records, time period **July 15, 2011** to **July 22, 2011** from the medical records of **Larry McCollum, TDCJ # 1721640**. These said records are kept in the regular course of business by an employee or representative of UTMB-Correctional Managed with knowledge of the act, event, condition, opinion or diagnosis, recorded or to transmit information thereof to be included in such record; and the record was made at or near the time or reasonably soon thereafter. The records attached hereto are the original or exact duplicates of the original and no other documents exist in the files on the above named person at **TDCJ Health Services Archives**".

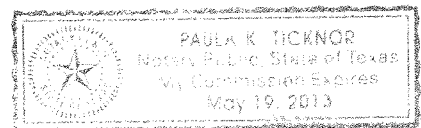


Lisa Lopez

State of Texas,
County of Walker

Before Me Paula K. Ticknor on this day personally appeared Lisa Lopez, known to me through her Texas Driver's License to be the person whose name is subscribed to the foregoing instrument and acknowledge to me that she executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office this 22nd day of Feb, A.D., 2013



Date: 07/22/2011 03:27
From: GINA STOKES
To: HUTCHINS NURSING STAFF(E); HUTCHINS ALL PROVIDERS(E);
Subject:
Re: LARRY MCCOLLUM

PATIENT: MCCOLLUM, LARRY TDCJ #: 1721640 FACILITY:
HUTCHINS (HJ)

HE WAS SENT OUT 911. HE WAS HAVING A SEIZURE ON TOP BUNK AND SECURITY COULD NOT
GET HIM DOWN SAFELY. NO HISTORY SEEN OF SEIZURES.
FOLLOW UP ON HIS RETURN.HE WAS SENT TO ER AT PARKLAND HOSPITAL.

THANKS,
CRAIN TRIAGE

**CORRECTIONAL MANAGED CARE
CLINIC NOTES - NURSING**

Patient Name: MCCOLLUM, LARRY G **TDCJ#:** 1721640 **Date:** 07/22/2011 03:16 **Facility:** HUTCHINS (HJ)

Age: 58 year **Race:** W **Sex:** male

Most recent vitals from 11/13/2003: BP: 112 / 87 (Standing) ; Wt: 192 Lbs.; Height: ; Pulse: 107 (Standing) ; Resp: 18 / min; Temp: 97 (Oral)

Allergies: NO KNOWN ALLERGIES

Patient Language:	Name of interpreter, if required:
--------------------------	--

Current Medications:

SCR INITIATED?		YES	Date Received:
	X	NO	

Nursing Triage Form

Name of Security Officer Calling LT SANDERS

Presenting Problems/Symptoms HE IS ON THE TOP BUNK HAVING A SEIZURE THAT HAS LASTED FOR 5 MINUTES, SECURITY CAN NOT GET HIM OFF THE TOP BUNK, THEY ARE STANDING UP AGAINST THE TOP BUNK TO KEEP HIM FROM FALLING. THEY CALLED 911. HE HAS NO HISTORY OF SEIZURE DISORDER. HIS CELL MATE SAYS HE IS DIABETIC. NO HX OF THIS SEEN IN CHART.

NO MEDICAL ON THE UNIT

Protocol used: (List protocol name, and page number):

1. SEIZURE PG 471

2. _____

3. _____

4. _____

5. Other _____

Problem: X Emergent Urgent Non-Urgent
(Immediately) (2 hrs) (Pass Issued / Fill out Sick Call Request)

Circle/Mark "X" Correct Information

Telephone Triage

X 1. Instructions given to security officer to call 911 and transport offender patient to nearest local community hospital ED.

_____ 2. Instructions given to security officer to transport the offender patient to the designated HUB for a full assessment and further care. (applicable only if the facility is within a designated HUB area)

_____ 3. Instructed the Security officer to issue a pass to the offender patient to come to medical the next day.

_____ 4. Other as ordered by a provider: _____

_____ 5. Instructions given to security officer to place offender patient in front of the **DMS** equipment in medical for assessment / interview.

Additional Comments UR NOTIFIED. CONTACT ANN. PRECERT NO 776845

Patient Name: MCCOLLUM, LARRY G Patient DOB: 04/04/1953

Patient ID: 1716091 Service Date: 07/20/2011 08:42:00

Lab Data Imported From and Tests Performed By:

LabCorp 1-800-292-4021

Patient Name : MCCOLLUM, LARRY G
 Patient Id : 1721640
 Patient Phone :
 Date of Birth : 04/04/1953
 SS# : Sex : Male

Ordering
 Physician : ORIG, TITO
 Facility : HUTCHINS (HJ)
 1500 E. LANGDON RD
 HUTCHINS TX 75241

Test Name	Result	ABN Flag	Unit	Reference Range
-----------	--------	----------	------	-----------------

Accession: 32858464 Requisition: 32858464
 Drawn: 07/20/11 08:42 Received: 07/20/11 23:40 Reported: 07/21/11 08:43

Procedure: CBC With Differential/Platelet

WBC	13.1	H	x10E3/uL	4.0-10.5
RBC	4.63		x10E6/uL	4.10-5.60
Hemoglobin	14.8		g/dL	12.5-17.0
Hematocrit	43.4		%	36.0-50.0
MCV	94		fL	80-98
MCH	32.0		pg	27.0-34.0
MCHC	34.1		g/dL	32.0-36.0
RDW	15.2	H	%	11.7-15.0
Platelets	204		x10E3/uL	140-415
Neutrophils	60		%	40-74
Lymphs	32		%	14-46
Monocytes	8		%	4-13
Eos	0		%	0-7
Basos	0		%	0-3
Immature Cells				
Neutrophils (Absolute)	7.7		x10E3/uL	1.8-7.8
Lymphs (Absolute)	4.3		x10E3/uL	0.7-4.5
Monocytes (Absolute)	1.1	H	x10E3/uL	0.1-1.0
Eos (Absolute)	0.0		x10E3/uL	0.0-0.4
Baso (Absolute)	0.0		x10E3/uL	0.0-0.2
Immature Granulocytes	0		%	0-2

Please note reference interval change

Immature Grans (Abs) 0.0 x10E3/uL 0.0-0.1
 NRBC

Hematology Comments:

Procedure: Comp. Metabolic Panel (14)

Glucose, Serum	130	H	mg/dL	65-99
BUN	31	H	mg/dL	6-24
Creatinine, Serum	1.67	H	mg/dL	0.76-1.27
eGFR If NonAfricn Am	44	L	mL/min/1.73 m2	>59
eGFR If Africn Am	51	L	mL/min/1.73 m2	>59

Note: A persistent eGFR <60 mL/min/1.73 m2 (3 months or more) may indicate chronic kidney disease. An eGFR >59 mL/min/1.73 m2 with an elevated urine protein also may indicate chronic kidney disease.

Print Date: 07/21/2011 07:53

Page: 1/4

Data Imported From and Tests Performed By:

LabCorp 1-800-292-4021

Patient Name : MCCOLLUM, LARRY G
 Patient Id : 1721640
 Patient Phone :
 Date of Birth : 04/04/1953
 SS# : Sex : Male

Ordering

Patient Name: MCCOLLUM, LARRY G Patient DOB: 04/04/1953

Patient ID: 1716091 Service Date: 07/20/2011 08:42:00

Physician : ORIG, TITO
 Facility : HUTCHINS (HJ)
 1500 E. LANGDON RD
 HUTCHINS TX 75241

Test Name	Result	ABN Flag	Unit	Reference Range
Calculated using CKD-EPI formula.				
BUN/Creatinine Ratio	19			9-20
Sodium, Serum	133	L	mmol/L	135-145
Potassium, Serum	3.5		mmol/L	3.5-5.2
Chloride, Serum	91	L	mmol/L	97-108
Carbon Dioxide, Total	18	L	mmol/L	20-32
Verified by repeat analysis				
Calcium, Serum	8.8		mg/dL	8.7-10.2
Protein, Total, Serum	7.8		g/dL	6.0-8.5
Albumin, Serum	4.0		g/dL	3.5-5.5
Globulin, Total	3.8		g/dL	1.5-4.5
A/G Ratio	1.1			1.1-2.5
Bilirubin, Total	0.8		mg/dL	0.0-1.2
Alkaline Phosphatase, S	56		IU/L	25-150
AST (SGOT)	34		IU/L	0-40
ALT (SGPT)	21		IU/L	0-55

Procedure: Urinalysis, Complete

Specific Gravity	1.028			1.005-1.030
pH	5.5			5.0-7.5
Urine-Color	Yellow			Yellow
Appearance	Cloudy	A		Clear
WBC Esterase	1+	A		Negative
Protein	1+	A		Negative/Trace
Glucose	Negative			Negative
Glucose Reflex				
Ketones	Trace	A		Negative
Occult Blood	Negative			Negative
Bilirubin	Negative			Negative
Urobilinogen, Semi-Qn	0.2		mg/dL	0.0-1.9
Nitrite, Urine	Negative			Negative
Microscopic Examination	See below:			

Procedure: Microscopic Examination

WBC	>30	A	/hpf	0 - 5
RBC	0-3		/hpf	0 - 3
Epithelial Cells (non renal)	0-10		/hpf	0 - 10
Epithelial Cells (renal)				
Casts	Present	A	/lpf	None seen
Cast Type	Hyaline casts			N/A
Print Date: 07/21/2011 07:53				Page: 2/4
Data Imported From and Tests Performed By:				
LabCorp 1-800-292-4021				

Patient Name : MCCOLLUM, LARRY G
 Patient Id : 1721640
 Patient Phone :
 Date of Birth : 04/04/1953
 SS# : 000-00-3517 Sex : Male

Ordering

Physician : ORIG, TITO
 Facility : HUTCHINS (HJ)
 1500 E. LANGDON RD
 HUTCHINS TX 75241

Test Name	Result	ABN Flag	Unit	Reference Range
-----------	--------	----------	------	-----------------

Patient Name: MCCOLLUM, LARRY G Patient DOB: 04/04/1953

Patient ID: 1716091 Service Date: 07/20/2011 08:42:00

Crystals

Crystal Type

Mucus Threads

Present

Not Estab.

Bacteria

Few

None seen/Few

Yeast

Trichomonas

Comment

Procedure: Urinalysis, Complete

Microscopic Examination

Procedure: Lipid Panel

Cholesterol, Total 157 mg/dL 100-199

Triglycerides 195 H mg/dL 0-149

HDL Cholesterol 16 L mg/dL >39

According to ATP-III Guidelines, HDL-C >59 mg/dL is considered a negative risk factor for CHD.

VLDL Cholesterol Cal 39 mg/dL 5-40

LDL Cholesterol Calc 102 H mg/dL 0-99

Procedure: Panel 083824

HIV 1/0/2 Abs-Index Value <1.00 <1.00

Index Value: Specimen reactivity relative to the negative cutoff.

HIV 1/0/2 Abs, Qual Non Reactive Non Reactive

Procedure: Hgb Alc with eAG Estimation

Hemoglobin Alc 6.2 H % 4.8-5.6

Increased risk for diabetes: 5.7 - 6.4

Diabetes: >6.4

Glycemic control for adults with diabetes: <7.0

Estim. Avg Glu (eAG) 131 mg/dL

Procedure: TSH

TSH 2.860 uIU/mL 0.450-4.500

Procedure: RPR

RPR Non Reactive Non Reactive

L Low, H High, C Critical, * Abnormal Alpha

Print Date: 07/21/2011 07:53

Page: 3/4

Data Imported From and Tests Performed By:

LabCorp 1-800-292-4021

Patient Name : MCCOLLUM, LARRY G

Patient Id : 1721640

Patient Phone :

Date of Birth : 04/04/1953

SS# : 000-00-3517 Sex : Male

Ordering

Physician : ORIG, TITO

Facility : HUTCHINS (HJ)

1500 E. LANGDON RD

HUTCHINS TX 75241

Test Name	Result	ABN Unit Flag	Reference Range
-----------	--------	---------------	-----------------

Patient Name: MCCOLLUM,LARRY G Patient DOB: 04/04/1953

Patient ID: 1716091 Service Date: 07/20/2011 08:42:00

Print Date: 07/21/2011 07:53

Page: 4/4

Electronically Signed by ORIG, TITO M. M.D. on 08/03/2011.

##And No Others##

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SG01728 /HJ01/H506

TEXAS DEPARTMENT OF CRIMINAL JUSTICE
HEALTH SUMMARY FOR CLASSIFICATION09:09:17
07/20/2011NAME: MCCOLLUM, LARRY GENE
IDCJ#: 01721640 SID#: 03950494
UNIT: HJ HOUSING: C7-046T
JOB: TRANSIENT PEND DIAG PROCESSINGDOB: 04/04/1953
WGT: 330 LBS
HGT: 5'10"

P U L H E S

1	1	1	1	1	1
A	A	A	A	A	A
					H

I. FACILITY ASSIGNMENT (CHECK ONE)

- X A. NO RESTRICTION
 B. BARRIER-FREE FACILITY
 C. SINGLE LEVEL FACILITY
 D. SUITABLE FOR TRUSTEE CAMP? X YES ___ NO

II. HOUSING ASSIGNMENT

A. BASIC HOUSING (CHECK ONE)

- X 1. NO RESTRICTION
 2. SINGLE CELL ONLY
 3. SPECIAL HOUSING (HOUSING WITH
 LIKE MEDICAL CONDITION)
 4. CELL BLOCK ONLY

C. ROW ASSIGNMENT (CHECK ONE)

- X 1. NO RESTRICTION
 2. GROUND FLOOR ONLY

B. BUNK ASSIGNMENT (CHECK ONE)

- X 1. NO RESTRICTION
 2. LOWER ONLY

D. WHEELCHAIR USE (CHECK ONE)

1. NO RESTRICTION
 2. PHOP ORDERED
 3. UTILITY USE

III. WORK ASSIGNMENT/RESTRICTIONS (CHECK ALL THAT APPLY)

- | | |
|-------------------------------|---|
| 1. MEDICALLY UNASSIGNED | 15. NO FOOD SERVICE |
| 2. PSYCHIATRICAL UNASSIGNED | 16. NO REPETITIVE USE OF HANDS |
| 3. SEDENTARY WORK ONLY | 17. NO WALK WET/UNEVEN SURFACES |
| 4. FOUR HOUR WORK RESTRICTION | 18. DO NOT ASSIGN TO MEDICAL |
| 6. EXCUSE FROM SCHOOL | 19. NO WORK IN DIRECT SUNLIGHT |
| 7. LIMITED STANDING | 20. NO TEMPERATURE EXTREMES |
| 8. NO WALKING > ___ YARDS | 21. NO HUMIDITY EXTREMES |
| 9. NO LIFTING > ___ LBS. | 22. NO EXPOSURE TO ENVIRONMENT POLLUTANTS |
| 10. NO BENDING AT WAIST | 23. NO WORK WITH CHEMICALS OR IRRITANTS |
| 11. NO REPETITIVE SQUATTING | 24. NO WORK REQUIRING SAFETY BOOTS |
| 12. NO CLIMBING | 25. NO WORK AROUND MACHINE WITH MOVING PART |
| 13. LIMITED SITTING | 26. NO WORK EXPOSURE TO LOUD NOISES |
| 14. NO REACHING OVER SHOULDER | |

IV. DISCIPLINARY PROCESS (CHECK ONE)

- X A. NO RESTRICTIONS
 B. CONSULT REP OF MENTAL HEALTH DEPT BEFORE TAKING DISCIPLINARY ACTION
 C. CONSULT REP OF MEDICAL DEPARTMENT BEFORE TAKING DISCIPLINARY ACTION

V. INDIVIDUALIZED TREATMENT PLAN (CHECK ALL THAT APPLY)

- X A. NO RESTRICTION C. MENTAL HEALTH REPRESENTATIVE REQUIRED
 B. MEDICAL REPRESENTATIVE REQUIRED

VI. TRANSPORTATION RESTRICTIONS (CHECK ONE)

- X A. NO RESTRICTION C. WHEELCHAIR VAN
 B. EMS AMBULANCE D. MULTI-PATIENT VEHICLE (MPV)

REDDY/SMITH MD/MHC 07/20/2011

PRINTED NAME AND TITLE OF REVIEWER

DATE

SIGNATURE OF REVIEWER

Patient Name: MCCOLLUM,LARRY G Patient DOB: 04/04/1953

Patient ID: 1716091 Service Date: 07/18/2011 12:35:00

HUTCHINS (HJ)
CID
/

LABORATORY DIRECTOR

TB SKIN TEST

MRN : 1721640 Accession:33015661 Age :58 Years
 Patient Name: MCCOLLUM, LARRY G Sex :Male
 Home Phone : Work : () -
 Admitting MD: UNKNOWN UNKNOWN Phone:
 Attending MD: UNKNOWN UNKNOWN Phone:
 Referring MD: Phone:
 Ordering MD : Phone:

Tech : VELVA L MCKINNEY L.V.N. Verifier:VELVA L MCKINNEY L.V.N.
 Collection Time: 07/18/2011 12:35
 Result Time : 08/01/2011 12:35
 Report Time : 08/01/2011 12:35
 Comment:

Test	Result	Abn	Normal Range	Units
MFG			-	
LOT #			-	
DOSE			-	
SITE			-	
ROUTE			-	
PPD READ	0 mm		-	
REFUS SIGN			-	

This document has been sent for signature, but has not yet been reviewed

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DATE INTERVIEWED: 7/18/11SCREENER'S INITIALS: SKB

7-15

TDCJ OFFENDER INTAKE PROCESSING PSYCHOLOGICAL SCREENING INTERVIEW

NAME: McCollum, Larry Gene TDCJ #: 1721640DOB: 4/4/53 AGE: 58 GENDER: ☒ MALE ☐ FEMALEPLACE OF BIRTH: Enid, OK RACE: ☒ CAUCASIANPRIOR TDCJ #: 110 5534 ☐ AFRICAN AMERICANPRIOR TDCJ INCARCERATIONS: ☒ YES ☐ NO ☐ HISPANICPRIOR ASSIGNMENT TO CTC: ☐ YES ☐ NO ☐ OTHER: _____PRIOR ASSIGNMENT TO DDP: ☐ YES ☐ NOON PSYCH. SERVICES CASELOAD: ☐ YES ☐ NOCURRENT OFFENSE: Forgery (1) (12 mos.)

SPECIAL CONSIDERATIONS FOR INTERVIEWS:

- ☒ NONE
- ☐ SPANISH-SPEAKING ONLY
- ☐ HEARING/VISUAL IMPAIRED
- ☐ WHEEL-CHAIR/OTHER SIGNIFICANT MOBILITY PROBLEM
- ☐ SECURITY RISK: _____
- ☐ OTHER: _____

OTHER GENERAL COMMENTS:

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YES NO

1. HOW ARE YOU FEELING?

Rough. Adjusting.☒ ☐

2. HAVE YOU EVER HAD ANY KIND OF MENTAL, EMOTIONAL, OR NERVE PROBLEMS?

DID YOU GET ANY TYPE OF COUNSELING?

yes

FROM WHOM? (IF APPLICABLE)

WHAT WAS IT FOR?

WHEN WAS IT?

WHERE WAS IT?

Buster Cole - transferred to Skyview #4 below☒ ☐

3. HAVE YOU EVER TAKEN MEDICINE(S) PRESCRIBED FOR YOUR:

☐ NERVES☐ MENTAL PROBLEMS☐ EMOTIONAL PROBLEMS?

SPECIFY THE MEDICATION:

Zoloft, etc.

WHEN DID YOU TAKE THIS MEDICATION?

2009

BY WHOM WAS IT PRESCRIBED?

☐ PSYCHIATRIST☐ PHYSICIAN☐ OTHER:thinks

CURRENT PSYCHOTROPIC MEDICATION:

- 0 -nothing☒ ☐

4. HAVE YOU EVER BEEN A PATIENT IN A MENTAL HOSPITAL?

WHY?

Depression - Loss of family members

WHEN?

WHERE?

Skyview - 2002-04

WAS IT:

☐ COURT COMMITMENT

OR

☐ VOLUNTARY?☐ ☒

5. HAS ANY MEMBER OF YOUR FAMILY EVER HAD MENTAL OR EMOTIONAL PROBLEMS?

WHAT TYPE?

☐ ☒

6. HAVE YOU EVER HAD A HEAD INJURY OR SEIZURE?

SPECIFY:

☐ ☒

7. HAVE YOU EVER TRIED TO HURT YOURSELF OR COMMIT SUICIDE?

HOW MANY TIMES?

HOW?

☐ CUT ARM / WRIST☐ HANGING☐ OD'ed ON☐ OTHER

WHEN?

WHY?

WAS MEDICAL ATTENTION REQUIRED?

☐ YES☐ NO☐ ☒

8. HAVE YOU EVER HURT YOURSELF ON PURPOSE WHEN YOU WERE NOT TRYING TO COMMIT SUICIDE?

HOW?

☐ ☒

9. ARE YOU THINKING ABOUT HURTING OR KILLING YOURSELF NOW?

☐ ☒

10. DO YOU HEAR THINGS THAT OTHER PEOPLE DO NOT HEAR?

SPECIFY:

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YES NO

- ☐ ☒ 11. DO YOU SEE THINGS THAT OTHER PEOPLE DO NOT SEE?

SPECIFY: _____

- ☐ ☒ 12. DO YOU BELIEVE THAT YOU HAVE ANY SPECIAL GIFTS OR SUPER POWERS THAT OTHERS DO NOT HAVE?

WHAT KIND? _____

13. WHAT KIND OF DRUGS DID YOU EXPERIMENT WITH OR USE ON A REGULAR BASIS?

<input type="checkbox"/> NONE	<input type="checkbox"/> BARBITURATES	<input type="checkbox"/> METHAMPHETAMINE (SPEED)
<input type="checkbox"/> HEROIN	<input type="checkbox"/> ACID	<input type="checkbox"/> INHALANTS
<input type="checkbox"/> COCAINE	<input type="checkbox"/> HASH	<input type="checkbox"/> ALCOHOL <i>quit 10 yrs. ago</i>
<input type="checkbox"/> MARIJUANA	<input type="checkbox"/> PCP	<input type="checkbox"/> OTHER _____

14. WHAT WAS THE LAST GRADE YOU COMPLETED IN SCHOOL? GRADE _____

WHERE ☒ USA ☐ MEXICO ☐ OTHER: _____
DO YOU HAVE A. ☒ HIGH SCHOOL DIPLOMA ☐ GED

- ☒ ☐ 15. WHILE IN SCHOOL, WERE YOU EVER IN SPECIAL CLASSES?

WHY? *S. E. Worked 1/2 day*
WHAT GRADE(S)? *12*

- ☐ ☒ 16. WERE YOU EVER PLACED IN A JUVENILE DETENTION CENTER, BOY'S HOME OR OTHER GROUP HOME?

WHY? _____

- ☐ ☒ 17. HAVE YOU EVER BEEN CONVICTED OF AN OFFENSE COMMONLY CONSIDERED TO BE IN THE CATEGORY OF SEXUAL OFFENSES?

IF YES, SPECIFY: _____

- ☐ ☒ 18. HAVE YOU EVER, WITH LITTLE OR NO PROVOCATION, EXPERIENCED LOSS OF CONTROL OF YOURSELF THAT RESULTED IN SERIOUS ASSAULT TO SOMEONE OR DESTRUCTION OF PROPERTY?

- ☐ ☒ 19. HAVE YOU EVER BEEN A VICTIM OF CRIMINAL VIOLENCE? IF YES, SPECIFY:

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BEHAVIORAL OBSERVATIONS

APPEARANCE: ☒ UNREMARKABLE ☐ DISHEVELED ☐ ODD
HYGIENE: ☒ GOOD ☐ FAIR ☒ POOR *B.O.*
INTERACTION: ☒ COOPERATIVE ☐ LIMITED ☐ UNCOOPERATIVE
MOTOR BEHAVIOR: ☒ WITHIN NORMAL LIMITS ☐ RESTLESS ☐ DID NOT MOVE
☐ _____
SPEECH: ☐ CLEAR ☐ MUMBLES ☐ SPEECH IMPEDIMENT
RATE: ☒ SPONTANEOUS ☐ FAST ☐ _____
MOOD: ☐ WITHIN NORMAL LIMITS ☒ SAD *teary-eyed* ☐ IRRITABLE
☐ UNUSUALLY HAPPY ☒ ANXIOUS ☐ FRIGHTENED
☒ SILLY ☐ _____
ALERTNESS: ☒ ALERT ☐ CONFUSED ☐ DAZED ☐ DISTRACTED

▼ **This section must be completed by a Qualified Mental Health Professional** ▼

DISPOSITION – REFERRED FOR FURTHER EVALUATION ☒ YES ☐ NO

REASON FOR REFERRAL:

- ☐ DISPLAYED SYMPTOMS OF PSYCHIATRIC ILLNESS
☒ HISTORY OF MENTAL HEALTH TREATMENT
☐ CURRENT SUICIDAL IDEATION
☐ PRIOR SUICIDAL GESTURE(S)
☐ DISPLAYED UNUSUAL BEHAVIOR
☐ AFFECTIVE DISTRESS NOTED
☐ UNUSUAL NATURE OF OFFENSE
☐ HIGH RISK FOR ADJUSTMENT PROBLEMS
☐ OTHER: _____

MENTAL HEALTH APPRAISAL COMPLETED BY:

J. Smith, MA
 Mental Health Clinician

PRINTED NAME

SIGNATURE

DATE

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TEXAS UNIFORM HEALTH STATUS UPDATE

I. NAME: McCollum Larry G. DOB: 4/04/53 AGE: 58
 Last First MI
 STATE ID# 3950494 RACE: W SEX: Male ☒ Female ☐
 COUNTY/TDCJ# 34610 WT. 330 HT: 5'10

II. CURRENT/CHRONIC HEALTH PROBLEMS

A. Health Problems

- ☐ 1. None
☐ 2. Asthma
☐ 3. Pregnancy
☐ 4. Dental Priority
☐ 5. Diabetes
☐ 6. Drug Abuse
☐ 7. Alcoholism
☐ 8. Orthopedic Problems
☐ 9. Cardiovascular/Heart Trouble
☐ 10. Suicidal
☐ 11. Mental Retardation
☐ 12. Mental Illness (Specify diagnosis) _____
☐ 13. Recent Surgery
☐ 14. Seizures
☐ 15. Dialysis
☒ 16. Hypertension
☒ 17. CARE System Y¹⁰

III. SPECIAL NEEDS (Check all that apply)

A. Housing Restrictions

- ☒ 1. None
☐ 2. Skilled Nursing Facility
☐ 3. Extended Care Facility
☐ 4. Psychiatric Inpatient Facility
☐ 5. Respiratory Isolation
☐ 6. Other: _____

B. Transportation

- ☒ 1. Routine
☐ 2. Crutches/Cane
☐ 3. Ambulance
☐ 4. Wheelchair/Wheelchair Van
☐ 5. Prosthesis: _____

C. Pending Specialty Clinic Appointment

None ☒ Type _____D. ALLERGIES NKA

NKA _____

*NOTE: When screening substance abuse facility clients, please contact the TDCJ-ID Health Services Liaison at (936)437-3589 for clients with any chronic disease symptoms deemed unstable.

B. Preventive Medicine

- ☒ 1. Tuberculosis Status
 Skin Test: Date Given: 6/24/11 Date Read: 6/27/11 Results 0 mm*
 X-Ray: Date: Normal Abnormal * Anti-TB Treatment? No Yes *
☐ 2. Hepatitis: A B C Other: _____
☐ 3. HIV Antibody: Test Date: Results: Neg Pos CD4: Date / /
☐ 4. Syphilis: Date: / / Type: Treatment Completed: Yes No

*NOTE: If any treatment has been recommended, the X-Ray was abnormal, or skin test indicates infection please attach tuberculosis record.

C. Other Health Care Problems: none

IV. CURRENT PRESCRIBED MEDICATIONS None _____

Medication	Dosage	Frequency
<u>Clonidine</u>	<u>0.1mg : tab P.O</u>	<u>PRN BP</u>

THIS FORM MUST ACCOMPANY ALL OFFENDERS TRANSFERRED TO AND FROM ALL TEXAS CRIMINAL JUSTICE ENTITIES

COMPLETED BY: Shelia Smith RN DATE: 7/15/11PHONE NUMBER: 254-757-2555 FACILITY: Mclellan County Jail

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aged Care
CID CLINIC NOTE
HIV PRE-TEST COUNSELING

Patient Name McCollum, LarryTDCJ # 1721640Date 07/15/2011Facility HUTCHINS (HJ)

Vitals BP _____ Wt _____ Height _____ Pulse _____ Resp _____ Temp _____

Patient Language:		Name of Interpreter, if required: NA	
S:	Chief Complaint:	<input checked="" type="checkbox"/>	Patient offered HIV testing per policy 14 11
		<input checked="" type="checkbox"/>	Pre-release HIV test
		<input type="checkbox"/>	Patient requesting HIV test
		<input type="checkbox"/>	Patient reported history of previous positive HIV test
		<input type="checkbox"/>	Other (specify)
O:	Yes	No	Mark "Yes" or "No" for the following:
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Patient is symptomatic (list symptoms)
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	The patient requests HIV testing and gave a history of the following risk factors
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Injected nonprescription drugs
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Unprotected sexual activity with multiple sex partners (male and/or female)
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Tattoo
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Patient received blood transfusions or blood products
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	The patient's TB skin test was positive
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Exposed staff to blood or other potentially infectious body fluids
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Patient was potentially exposed to blood and/or body fluids
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Patient offered HIV testing per policy 14 11
A:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Knowledge deficit
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	High risk
P:	Yes	No	Mark "Yes" or "No" for the following:
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	HIV pre-test counseling and HIV antibody testing is offered
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Discuss HIV prevention recommendations 1 Behave as if positive 2 Abstinence from sex, drugs and tattooing 3 Mutually monogamous relationships
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Review partner notification procedures should the patient test positive
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	The patient gave their verbal consent for HIV antibody testing (If consent given, obtain provider order for HIV testing)
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	The patient refused HIV antibody testing Obtain their signature on a Refusal of Treatment form (HSM-82)
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Health teaching offered stressing the importance of plan of care compliance
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	If potential exposure, report incident to Preventive Medicine department
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Patient verbalized level of understanding of the testing procedure, confidentiality and that they would not be rescheduled to receive negative test results, but only for positive or equivocal indeterminate results

Nurse Signature: VMcKinnonDate / Time 07/15/2011 @ 0900

05/01/2009

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aged Care
CID ABSTRACT OF IMMUNIZATIONS
Tuberculin Skin Tests

Patient Name McCollum, Larry TDCJ # 1721641

Date 07/15/2011 Facility HUTCHINS (HJ)

Vitals BP _____ Wt _____ Height _____ Pulse _____ Resp _____ Temp _____

Patient Language: _____ Name of interpreter, if required: NA

MANTOUX PPD

DATE/TIME GIVEN	MFG/LOT #	LFA	RFA	ROUTE
07/15/2011	JHP PHARM 148613			Intradermally

IMMUNIZATIONS

DATE/TIME GIVEN	MFG/LOT #	DOSE	ROUTE	TYPE OF VACCINE	SITE	REACTION	SIGNATURE/TITLE
07/15/2011	SANOFLI-PAST U3399AA	0.5 MI	IM	Td Booster	<input checked="" type="checkbox"/> L Deltoid <input type="checkbox"/> R Deltoid	NARN	<i>VMC Ring LVN</i>
		0.5 mL	<input type="checkbox"/> Sub Q <input type="checkbox"/> IM	Pneumococcal Vaccine	<input type="checkbox"/> L Deltoid <input type="checkbox"/> R Deltoid <input type="checkbox"/> Outer aspect of L or R upper arm		
		0.5 mL	IM	Influenza	<input type="checkbox"/> L Deltoid <input type="checkbox"/> R Deltoid		
		1.0 mL	IM	Hepatitis A #1 Vaccine	<input type="checkbox"/> L Deltoid <input type="checkbox"/> R Deltoid		
		1.0 mL	IM	Hepatitis A #2 Vaccine	<input type="checkbox"/> L Deltoid <input type="checkbox"/> R Deltoid		
		0.5 mL	Sub Q	Meningococcal	<input type="checkbox"/> Outer aspect of L or R upper arm		
		0.5 mL	Sub Q	Varicella #1	<input type="checkbox"/> Outer aspect of L or R upper arm		
		0.5 mL	Sub Q	Varicella #2	<input type="checkbox"/> Outer aspect of L or R upper arm		
		1.0 mL	IM	Hepatitis B #1 Vaccine	<input type="checkbox"/> L Deltoid <input type="checkbox"/> R Deltoid		
		1.0 mL	IM	Hepatitis B #2 Vaccine	<input type="checkbox"/> L Deltoid <input type="checkbox"/> R Deltoid		
		1.0 mL	IM	Hepatitis B #3 Vaccine	<input type="checkbox"/> L Deltoid <input type="checkbox"/> R Deltoid		
		0.5 mL	Sub Q	Measles/Mumps Rubella (MMR)	<input type="checkbox"/> Outer aspect of L or R upper arm		

Nurse Signature

*VMC Ring LVN*Date / Time 07/15/2011 @0900

HSM-2
05/01/2009

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58

**Correctional Managed Care
CID INTAKE INTERVIEW**Patient Name: McCollum, LarryTDCJ #: 1721640

Date: 07/15/2011

Facility: HUTCHINS (HJ)

Vitals BP: _____ Wt: _____ Height: _____ Pulse: _____ Resp: _____ Temp: _____

Patient Language:

Name of interpreter, if required: NA

S:	CHIEF COMPLAINT:				CID intake processing including pre-test HIV counseling
O:	YES	NO	REFUSED	N/A	Mark "Yes", "No" or "Refused" for the following:
	X				HIV - Patient verbally agrees to HIV testing per state law (if yes mark Plan line 1a, if no or refused obtain HSM-82 <u>and</u> mark Plan line 10)
	X				RPR - RPR test is required by state and policy/procedure #14 12 (if yes mark Plan line 1b, if no or refused obtain HSM-82)
		X			MMR - Born after 1956 - <u>1953</u>
	X				MMR - Attended Texas Schools (if no mark Plan line 2, or obtain refusal HSM-82)(If pregnant, mark N/A)
		X			HBV - Allergic to yeast
		X			HBV - Hepatitis B vaccine available - If no skip next two lines
					HBV - Agrees to Hepatitis B vaccine (if yes mark Plan line 3, if no obtain "Refusal of HBV Vaccine" HSM-98)
					HBV - Consent for hepatitis B vaccine signed (form 100E) or refusal signed
		X			TB - History of positive TB skin test - written documentation (if no and less than 45 years of age mark Plan line 4, if yes or refused mark Plan line 5)
					TB - If yes - date _____ CPX _____ months (if CPX taken less than 6 months or currently taking CPX mark Plan line 6)
					TB - Patient 45 years of age or older and no documentation available to verify a previous positive Mantoux skin test (if yes, mark Plan line 11)
	X				Tetanus & Diphtheria - Verbally agrees to Tetanus and Diphtheria Toxoid Booster (mark Plan line 7 if yes, if no or refused obtain HSM-82)
	YES	NO	UNKNOWN	N	
	X				History of varicella (if yes mark Plan line 9 to add alert code 5290 to MPL/Problem list, if no mark MPL/Problem list for possibly susceptible)
					If female, is patient pregnant? If yes how many weeks: _____ (if yes or unknown mark Plan line 8)
A:					Alteration Health Maintenance

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**Correctional Managed Care
CID INTAKE INTERVIEW**

P:	PLAN:
<input checked="" type="checkbox"/>	1a Obtain order for lab to draw HIV
<input checked="" type="checkbox"/>	1b Obtain order for lab to draw RPR
	2 Obtain order for MMR 0 5cc vaccine sub q
	3 Obtain order for Hepatitis B vaccine 20mcg/1ml – administer hep B vaccine at 0, 1 and 6 months if indicated per TDCJ policy
<input checked="" type="checkbox"/>	4 Obtain order for PPD 0 1cc ID (L) forearm and will check within 48-72 hours
	5 Obtain order for CXR single view
	6 Refer to provider to schedule for ITP/TB Chronic Clinic
<input checked="" type="checkbox"/>	7 Obtain order for Tetanus and Diphtheria Toxoid Booster 0 5cc vaccine IM
<input checked="" type="checkbox"/>	8 Refer to provider to schedule appointment
<input checked="" type="checkbox"/>	9 Add alert code 5290 to MPL/Problem List
<input checked="" type="checkbox"/>	10 Add alert code 1112 to MPL/Problem List (indicates HIV high risk screening completed)
<input checked="" type="checkbox"/>	11 Obtain order for two-step Mantoux skin test (PPD 0 1cc ID (L) forearm and will check within 48-72 hours. If the reaction is lesser than 10 mm of induration, the second step is administered one to two weeks later)
	REFER TO PROVIDER:
<input checked="" type="checkbox"/>	1a Order for lab to draw HIV
<input checked="" type="checkbox"/>	1b Order for lab to draw RPR
	2 Order for MMR 0 5cc vaccine sub q
	3 Order for Hepatitis B vaccine 20mcg/1ml – administer hep B vaccine at 0, 1 and 6 months if indicated per TDCJ policy
<input checked="" type="checkbox"/>	4 Order for PPD 0 1cc ID (L) forearm and will check within 48-72 hours
	5 Order for CXR single view
	6 Schedule appointment for ITP/TB Chronic Clinic
<input checked="" type="checkbox"/>	7 Order for Tetanus & Diphtheria Toxoid 0 5cc vaccine IM
<input checked="" type="checkbox"/>	8 Schedule appointment with provider
	9 Administer flu vaccine 0 5 CC IM x 1 if indicated per TDCJ policy
<input checked="" type="checkbox"/>	10 Order for two-step Mantoux skin test (PPD 0 1cc ID (L) forearm and will check within 48-72 hours. If thereaction is lesser than 10 mm of induration, the second step is administered one to two weeks later)

Nurse Signature: _____

*V McRimney LVN*Date / Time: 07/15/2011 @ 0900

Date & Time _____

NOTES

Offenders received from:

With history of:

P Current medication orders as per HJ providers.

VO T Orig, MD A Babbili, PA-C / N. Beckstrom, NP

O/C Clonidine
Start HctZ 25 of X1PO
9 AM X309 Babble PA

Medication Pass issued to Offender ~~YES~~ NO

HSM - 1 (Rev. 5/92)

Scanned by HICKS, STEPHANIE K. CCA in facility HUTCHINS (HJ) on 07/20/2011 13:31

CORRECTIONAL MANAGED CARE
INTAKE HISTORY AND HEALTH SCREENING

1721640

I. IDENTIFICATION

NAME: McCollum, Tony OCCUPATION: Driver EDUCATION: High School
 DOB: 04/04/53 COUNTY: McLennan PREVIOUS TDCJ #(s): _____

II. FAMILY HISTORY

1 Blood disease (sickle cell anemia, hemophilia)	YES	NO	18 INH Prophylaxis	YES	NO
2 Cancer	YES	NO	19 Intravenous Drug Abuse	YES	NO
3 Diabetes	YES	NO	20 Kidney Disease	YES	NO
4 Heart Disease	YES	NO	21 Liver Disease	YES	NO
5 High Blood Pressure	YES	NO	22 Mental Illness	YES	NO
6 Tuberculosis	YES	NO	23 Non Intravenous Drug Abuse/Alcoholism	YES	NO
III. PERSONAL HISTORY			24 Peptic Ulcers		
11 D 1 Asthma/Emphysema	YES	NO	25 Rheumatic Fever	YES	NO
2 Back Injury	YES	NO	26 Rheumatism/Arthritis	YES	NO
3 Blood Disease (sickle cell anemia, hemophilia)	YES	NO	27 Seasonal Allergies	YES	NO
4 Cancer	YES	NO	28 Sexually Transmitted Diseases	YES	NO
5 Cavities	YES	NO	29 Smoker	YES	NO
6 Depression/Suicide Attempt	YES	NO	30 Tetanus Immunization Date	YES	NO
7 Diabetes	YES	NO	31 Tuberculosis	YES	NO
8 Drug/ Food Allergies	YES	NO	32 Unprotected Sex w/Multiple Partners	YES	NO
9 Epilepsy/Seizures	YES	NO	33 Other	YES	NO
10 Glasses/Hearing Aid			IV. OBSTETRIC/GYNECOLOGIC		
11 Gum disease			AL HX		
12 Head Injury			1 Date of last menstrual period		
13 Heart Disease/Angina			2 Number of pregnancies/live births		
14 Hepatitis			3 History of Problem pregnancy		
15 High Blood Pressure			4 Date of last pap smear		
16 HIV + / AIDS			5 Date of last mammogram		
Prior HIV Test Date			6 History of birth control methods (IUD, pills, etc.)		
17 Homosexual/Bisexual Activities					

A. If YES to any of the above indicate family member or self, give date and treatment received
Father, Brother

B. History of hospitalization? ~~YES~~ NO
 Please list the DATE, HOSPITAL, CONDITION Hillman Hospital

C. Do you have any current medical, mental health or dental complaints? ~~YES~~ NO
 If yes, what tooth pull, Depression

D. Have you experienced any of these symptoms cough, weakness, weight loss, fevers, night sweats, loss of appetite or lethargy?
 YES NO if YES, when?

E. What illegal drugs have you used? NO
 What was the mode(s) of use? (Please circle) Smoking Injection Inhaled Ingested
 What amount and how often did you use drugs and alcohol?
 When was the last time you used drugs or alcohol?
 Have you ever had withdrawal or seizures when you stopped using drugs or alcohol? YES NO

F. Are you presently taking or supposed to be taking any prescribed medications? ~~YES~~ NO
 If YES, what See Med Sheet

HSM-13 (6/06)

Scanned by HICKS, STEPHANIE K. CCA in facility HUTCHINS (HJ) on 07/20/2011 13:32

CORRECTIONAL MANAGED CARE
INTAKE HISTORY AND HEALTH SCREENING

Reason for taking medications									
G	Observations	Tremor	YES	NO	Sweating	YES	NO	Other	
	Condition of skin	Cuts	YES	NO	Bruises	YES	NO		
		Sores	YES	NO	Other				
	Body & Movement	Deformities	YES	NO	Impaired Motor Activity	YES	NO		
		Other							
H BEHAVIOR AND MENTAL STATUS									
Hygiene & Appearance		<input checked="" type="checkbox"/> Clean, neat		<input type="checkbox"/> Dirty, sloppy		<input type="checkbox"/> Other			
Orientation (ask questions and document response)									
		What is today's date? 7/15/11							
		What time is it? Morning							
		What place is this? Hutch							
Speech		<input checked="" type="checkbox"/> Normal	<input type="checkbox"/> Loud	<input type="checkbox"/> Soft	<input type="checkbox"/> Mumbling		<input type="checkbox"/> Other		
Attitude		<input checked="" type="checkbox"/> Appropriate	<input type="checkbox"/> Laughing	<input type="checkbox"/> Crying	<input type="checkbox"/> Cursing	<input type="checkbox"/> Quiet	<input type="checkbox"/> Other		
I THOUGHT CONTENT (Please circle YES or NO)									
Are you having current thoughts about suicide or self-injury?					YES	NO			
Do you see or hear things that others do not see or hear?					YES	NO			
Do you have any special powers abilities?					YES	NO			
Do you receive personal messages from the TV or radio?					YES	NO			
Do you have any phobias or excessive fears?					YES	NO			
J. DISPOSITION									
Routine referral to		<input checked="" type="checkbox"/> Medical	<input checked="" type="checkbox"/> Mental Health	<input checked="" type="checkbox"/> Dental	<input checked="" type="checkbox"/> CID				
Immediate referral to		<input type="checkbox"/> Medical	<input type="checkbox"/> Mental Health	<input type="checkbox"/> Dental	<input type="checkbox"/> CID				
Release to general population		<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO	<input type="checkbox"/> Other					

Offender Signature	<i>Larry McCall</i>	Date	7-15-11
Reviewer Signature	<i>D. Byrnes</i>	Date	7/15/11

Approved by 7/18/11

HSM-13 (6/06)

AFFIDAVIT

THE STATE OF TEXAS

§

COUNTY OF DALLAS

§

§

BEFORE ME, the undersigned authority, personally appeared Jeffery Pringle, known to me to be a credible person over the age of 18 years, who, being duly sworn by me, did depose and say that the following is true and correct:

"My name is Jeffery Pringle. I am of sound mind; capable of making this affidavit; and I am authorized to make this affidavit in the capacity herein stated. I am personally acquainted with the facts herein stated.

"I am employed as Warden for the Texas Department of Criminal Justice ("TDCJ") Hutchins Unit located in Dallas, Texas, and do hereby certify that I am the custodian of records maintained in the regular course of business of the TDCJ.

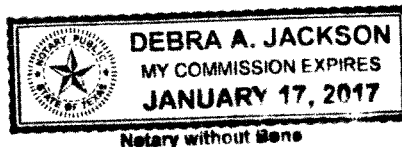
"I have reviewed the records you have requested; and hereby certify that the attached copies of documents are true and correct copies of the original records now on file in my custody. I further certify that the records attached hereto are maintained in the usual and regular course of business at the TDCJ. The entries made and/or documents created were created at or about the time of the occurrence, or reasonable soon thereafter, by an employee or representative of TDCJ with knowledge of the act, event, condition, opinion, or diagnosis reflected in the records, and that such records are maintained on each and every offender confined here.

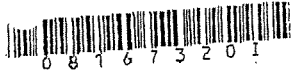
"Attached are copies of the records requested of Offender McCollum, Larry Gene #1721640 consisting of 19 pages and described as Pen Packet; which, were requested.


Jeffery Pringle, Affiant

SWORN TO AND SUBSCRIBED BEFORE ME on August 22, 2013, by the said, Jeff Pringle to certify which, witness my hand and seal of office.


Notary Public in and for the State of Texas





CASE NO. 2011-531-C2 COUNT N/A
INCIDENT NO./TRN: 9025469582

FILED

IN THE 54TH DISTRICT
COURT

KAREN C. MATKIN
DISTRICT CLERK
MCLENNAN COUNTY, TEXAS
DEPUTY *John Smith*

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STATE OF TEXAS

ERRY GENE MCCOLLUM

TE ID No.: TX3950494

JUDGMENT OF CONVICTION BY COURT—WAIVER OF JURY TRIAL

Judge Presiding:	HON. MATT JOHNSON	Date Judgment Entered:	6/23/2011
Attorney for State:	ROBERT MOODY	Attorney for Defendant:	DOUG HENAGER
Offense for which Defendant Convicted:			
CHARGES		Statute for Offense:	
Arresting Instrument:		32.21 Penal Code	
Classification of Offense:			
6/3/2009			
Grade of Offense:		Plea to Offense:	
STATE JAIL FELONY		GUILTY	
Terms of Plea Bargain:		Findings on Deadly Weapon:	
12 MONTHS IN A STATE JAIL FACILITY AND A FINE OF \$0.00		N/A	
Plea to 1st Enhancement		Plea to 2nd Enhancement/Habitual	
Paragraph: N/A		Paragraph: N/A	
Findings on 1st Enhancement		Findings on 2nd Enhancement/Habitual	
Paragraph: N/A		Paragraph: N/A	
Date Sentence Imposed:		Date Sentence to Commence:	
6/23/2011		6/23/2011	
Place of Confinement and Placement:			
12 MONTHS STATE JAIL DIVISION, TDCJ			

THIS SENTENCE SHALL RUN CONCURRENTLY.

☐ SENTENCE OF CONFINEMENT SUSPENDED, DEFENDANT PLACED ON COMMUNITY SUPERVISION FOR N/A

Court Costs: Restitution/Reparation:

\$425.00 \$ N/A

Restitution/Reparation Payable to the McLennan County District Clerk for the benefit of:
☐ VICTIM (listed in the Restitution Exhibit incorporated in this Judgment by reference.)
☐ AGENCY/AGENT (listed in the Restitution Exhibit incorporated in this Judgment by reference.)

Attachment A, Order to Withdraw Funds, is incorporated into this judgment and made a part hereof.

Offender Registration Requirements do not apply to the Defendant. TEX. CODE CRIM. PROC. chapter 62

Age of the victim at the time of the offense was N/A

If Defendant is to serve sentence in TDCJ, enter incarceration periods in chronological order.

From 8/26/2010 to 8/27/2010 From 3/13/2011 to 3/13/2011 From to

From to From to From to

If Defendant is to serve sentence in county jail or is to receive credit toward fine and costs, enter days credited below.

N/A DAYS NOTES: N/A

MCCOLLUM 646

Appendix 383

Enter the language of the judgment below by reference.

Both parties announced ready for trial. Defendant waived the right of trial by jury and entered the plea indicated above. The Court then admonished Defendant as required by law. It appeared to the Court that Defendant was mentally competent to stand trial, made the plea freely and voluntarily, and was aware of the consequences of this plea. The Court accepted the plea and entered it of record. Having heard the evidence submitted, the Court found Defendant guilty of the offense indicated above. In the presence of Defendant, the Court pronounced sentence against Defendant.

The Court **FINDS** Defendant committed the above offense and **ORDERS, ADJUDGES AND DECREES** that Defendant is guilty of the above offense. The Court **FINDS** the Presentence Investigation, if so ordered, was done according to the applicable provisions of TEX. CODE CRIM. PROC. art. 42.12 § 9.

The Court **ORDERS** Defendant punished as indicated above. The Court **ORDERS** Defendant to pay all fines, court costs, restitution as indicated above.

Punishment Options (select one)

Confinement in State Jail or Institutional Division. The Court **ORDERS** the authorized agent of the State of Texas or the Sheriff of this County to take, safely convey, and deliver Defendant to the **Director, State Jail Division, TDCJ**. The Court **ORDERS** Defendant to be confined for the period and in the manner indicated above. The Court **ORDERS** Defendant remanded in the custody of the Sheriff of this county until the Sheriff can obey the directions of this sentence. The Court **ORDERS** that upon release from confinement, Defendant proceed immediately to the **MCCLENNAN COUNTY DISTRICT CLERK'S OFFICE**. If there, the Court **ORDERS** Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.

County Jail—Confinement / Confinement in Lieu of Payment. The Court **ORDERS** Defendant immediately committed in the custody of the Sheriff of _____ County, Texas on the date the sentence is to commence. Defendant shall be confined in _____ County Jail for the period indicated above. The Court **ORDERS** that upon release from confinement, Defendant shall proceed immediately to the _____ County Jail. Once there, the Court **ORDERS** Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.

Fine Only Payment. The punishment assessed against Defendant is for a **FINE ONLY**. The Court **ORDERS** Defendant to proceed immediately to the Office of the _____ County. Once there, the Court **ORDERS** Defendant to pay or make arrangements to pay all fines and court costs as ordered by the Court in this cause.

Execution / Suspension of Sentence (select one)

The Court **ORDERS** Defendant's sentence **EXECUTED**.

The Court **ORDERS** Defendant's sentence of confinement **SUSPENDED**. The Court **ORDERS** Defendant placed on community supervision for the adjudged period (above) so long as Defendant abides by and does not violate the terms and conditions of community supervision. The order setting forth the terms and conditions of community supervision is incorporated into this judgment by reference.

The Court **ORDERS** that Defendant is given credit noted above on this sentence for the time spent incarcerated.

Furthermore, the following special findings or orders apply:

Court assesses all court appointed attorney's fees, investigator's fees, and interpreter's fees as costs in this cause and Orders the Defendant to pay the same.

The Restitution Exhibit is incorporated in this Judgment by reference.

The Court **FINDS** that, with the consent of the State's attorney, Defendant admitted guilt as to the following unadjudicated offense(s), the Court agreed to take the unadjudicated offense(s) into account in determining the sentence for the offense of which Defendant was adjudged guilty. Accordingly, the Court **FINDS** prosecution is barred for the following unadjudicated offense(s): **TEX. PENAL E §12.45.**

Read and entered on June 23, 2011


MATT JOHNSON
JUDGE PRESIDING

RIGHT THUMBPRINT



Defendant's signature



Officer's signature



MCCOLLUM 647

Appendix 384

CAUSE NO. 2011-31702

THE STATE OF TEXAS

§

IN THE 54TH JUDICIAL

VS

§

DISTRICT COURT OF

LARRY GENE MCCOLLUM

§

McLENNAN COUNTY, TEXAS

WAIVER OF APPEAL

I, LARRY GENE MCCOLLUM, the Defendant, after complete consultation with my Attorney of Record, in Open Court, and being fully aware of the sentence heretofore pronounced against me by the Court, would state:

That I, LARRY GENE MCCOLLUM, understand that I have the right to file a Motion for New Trial and an Amended Motion for New Trial within thirty (30) days of the entry of a Judgment and Sentence, or Order Granting Community Supervision Probation, or other Order of the Court;

That I, LARRY GENE MCCOLLUM, understand that I have the right to request the Court's permission to Appeal if the punishment assessed against me did not exceed the recommendation of the State, if any, and that I have the right to Appeal matters raised by written motion and presented to the Court prior to my trial;

That I, LARRY GENE MCCOLLUM, understand that I have the right to give Notice of Appeal and to Appeal from the Judgment, Sentence or Order of this Court, unless otherwise prohibited from doing so by law;

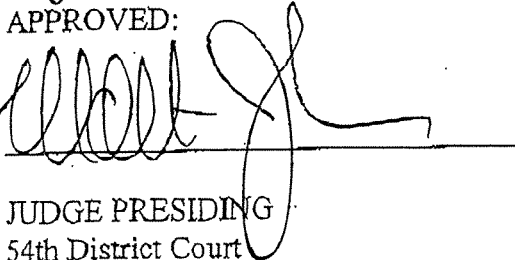
That I, LARRY GENE MCCOLLUM, understand that if I appeal, and I am indigent, I have the right to a free record and transcript and an appointed attorney to prosecute my appeal.

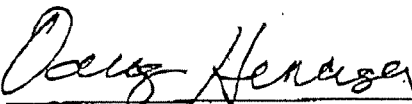
I, LARRY GENE MCCOLLUM, state that I desire to **WAIVE** each and all of my rights to Appeal, including the filing a Motion for New Trial, requesting permission to appeal, appealing matters raised by written motion prior to trial, giving Notice of Appeal, appealing the Judgment, Sentence or Order of the Court, and a free record, transcript and attorney on appeal. I make this **WAIVER** freely, intelligently and voluntarily. I desire to accept the Sentence or Order of the Court, and ask the Court to allow me to **WAIVE ALL RIGHTS I HAVE TO APPEAL**. I ask the Court to approve this Waiver, which will render the Judgment, Sentence or Order of the Court **FINAL** in all respects.

Date: June 23, 2011

 LARRY GENE MCCOLLUM

APPROVED:


 JUDGE PRESIDING
 54th District Court


 DOUG HENAGER

MCCOLLUM 651

Appendix 385

THE STATE OF TEXAS

COUNTY OF McLENNAN

I, KAREN C. MATKIN, Clerk, District Courts in and for McLennan County, Texas, do hereby certify that the above and foregoing are true and correct copies of the following instruments, to-wit:

1. INDICTMENT
2. JUDGMENT & SENTENCE
3. WAIVER OF APPEAL

in Cause Number 2011-531-C2 in the 54th Judicial District Court of McLennan County, Texas, styled:

THE STATE OF TEXAS

VS.

LARRY GENE MCCOLLUM

as same appear from original instruments now on file in this office of which I have legal custody.

TO CERTIFY WHICH WITNESS MY HAND AND SEAL OF SAID COURT, at my office, in
the City of Waco, County of McLennan, Texas this the 29TH day of JUNE, 2011.

(seal)

KAREN C. MATKIN
Clerk, District Courts
McLennan County, Texas

By Gold D. Smith, Deputy

BUSINESS RECORDS AFFIDAVIT

STATE OF TEXAS

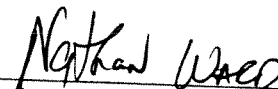
COUNTY OF Walker

RE: 3:12-CV-02037; Stephen McCollum, et al v. V. Livingston, et al

BEFORE ME, the undersigned authority, personally appeared Nathan Ward, who, being duly sworn by me, deposed as follows:

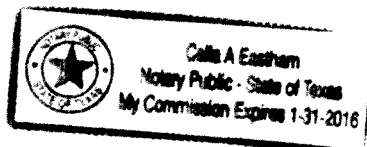
"My name is Nathan Ward. I am over 18 years of age, of sound mind, capable of making this affidavit, and have personal knowledge of the facts herein stated:


"I am employed as a Regional Manager with the Office of the Inspector General (OIG) – Texas Department of Criminal Justice. I am the custodian of the attached records of the OIG. These records are kept by the OIG in the regular course of business, and it was the regular course of business of the OIG for an employee or representative of the OIG, with knowledge of the act, event, condition, or opinion, recorded to make the record or to transmit information thereof to be included in such record; and the record was made at or near the time or reasonably soon thereafter. The attached record is an exact duplicate of the record on file with the Office of the Inspector General in Criminal Case File No. 2011.03006 concerning Offender Larry McCollum, TDCJ No. 01721640, as of the date of this affidavit.



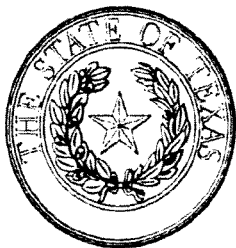
Nathan Ward
Regional Manager
Office of the Inspector General

SWORN TO AND SUBSCRIBED before me on this the 14th day of December 2012.





NOTARY PUBLIC in and for
The State of Texas
Printed Name: Celia A Eastham
My commission expires: January 31, 2016



Texas Department of Criminal Justice

Brad Livingston
Executive Director

Administrative Incident Review

TEXAS DEPARTMENT OF CRIMINAL JUSTICE HUTCHINS STATE JAIL

Incident Number: I-10671-07-11

TO: Emergency Action Center

THRU: Robert Eason
Region II Director

SUBJECT: Natural Attended Death

**PERSONS
INVOLVED:**

Offender McCollum, Larry #1721640; W/M; DOB - 04/04/53; Age 58; NR custody; Serving a 12 month sentence for Forgery from McClennan County; Sentence Begin Date 06/21/11; TDCJ Received Date 07/15/11.

SUMMARY:

On Thursday July 28, 2011 at approximately 2335 hours Offender Larry McCollum was pronounced deceased by the attending Doctor Charles Owens and Inter-Physician Rigoberto Ramirez at Parkland Hospital in Dallas, Texas. The preliminary cause of death is listed as Respiratory Failure/Neurological Failure. The offender's next of kin, Mrs. Sharon McCollum (wife) was contacted and advised of the offender's death.

On Friday July 22, 2011 at approximately 0300 hours, offender McCollum was transported via ambulance to Parkland Hospital after being found in his assigned bunk (C7-46) with what appeared to be a seizure. Staff were able to take the offender to the medical department where a triage nurse at the Crain Unit was contacted and recommended the offender be sent to the hospital via 911 due to no medical notes in the computer for offender McCollum. Offender McCollum had been received on the Hutchins State Jail on July 15, 2011, from McClennan County. The offender was assessed at Parkland Hospital and placed on a ventilator. The offender's condition at that time was listed as critical and he was assigned to the 9th floor Intensive Care unit.

On July 22, 2011 the next of Kin was contacted and advised by Warden Polk of offender McCollum's condition and to obtain his medical history. Offender McCollum's immediate family was allowed visitation. Offender McCollum received many tests to determine if he had any neurological response/s and to determine the original cause of his seizure. Offender McCollum remained on a ventilator until Thursday July 28, 2011, as Mrs. Sharon McCollum and family members were provided information concerning offender McCollum's care and health status by the attending Physician at Parkland Hospital. The family at that time chose to remove the offender from the ventilator and cease all life saving

Our mission is to provide public safety, promote positive change in offender behavior, reintegrate offenders into society, and assist victims of crime.

1500 E. Langdon Road
Dallas, Texas 75241-7136

CORRECTIONAL MANAGED HEALTH CARE POLICY MANUAL	Effective Date: 11/17/2011	NUMBER: E-37.1 Page 1 of 5
	Replaces: 12/3/2009 (E37.1) 6/1/2009 (E38.1)	
	Formulated: 10/85 Reviewed: 11/11	
DAILY PROCESSING OF HEALTH COMPLAINTS AND SICK CALL		

PURPOSE: To describe procedures for processing offender health complaints and establish guidelines for offender sick call services.

POLICY: Each facility within the Texas Department of Criminal Justice provides daily processing of offender health complaints and has a sick call system for the treatment of routine, non-emergent illness or injury.

Sick call services by qualified health care personnel are offered a minimum of five days each week.

It is the responsibility of each facility Director of Nursing (TTHUSC)/Nurse Manager (UTMB-CMC) to develop a nursing sick call schedule that is approved by the facility health authority/management team.

DEFINITIONS:

Sick Call Request (SCR) - Any written expression of a health related complaint or request to access health services (dental, mental health or medical).

Sick Call Visit - An initial in person assessment of an offender who has submitted a SCR performed by a licensed health care professional and conducted in a clinical setting.

Mental Health Staff – Individuals with special training and education to work in the mental health field. These individuals may or may not have a Master's level or above mental health degree

Qualified Mental Health Professional (QMHP) – physician, midlevel provider, psychologist, Master's level psychotherapist, or Master's level social worker.

Walk-in – an offender who presents to the clinic in person during hours of operation requesting to be seen by a licensed health care professional

Written Response Only- Written instruction or information that is the sole response to the SCR that completely addresses the issues in the SCR.

Licensed Healthcare Worker – a licensed vocational nurse, registered nurse, midlevel provider, physician, psychiatrist, psychologist, Master's level psychotherapist, Master's level social worker, or dentist,

CORRECTIONAL MANAGED HEALTH CARE POLICY MANUAL	Effective Date: 11/17/2011	NUMBER: E-37.1 Page 2 of 5
	Replaces: 12/3/2009 (E37.1) 6/1/2009 (E38.1)	
	Formulated: 10/85 Reviewed: 11/11	
DAILY PROCESSING OF HEALTH COMPLAINTS AND SICK CALL		

PROCEDURE:

- I. At a minimum, Sick Call Request forms (HSA-9) must be available and accessible in-offender housing areas.
- II. Written offender requests for health care services (medical, dental and mental health) are to be placed in the container (s) designated for that purpose. All written offender requests for health care services will be processed as sick call requests even if they are not written on the HSA- 9 form.
- III. For offenders unable to write, the procedures listed in Attachment A must be followed. Medical staff will collaborate with security rank to assure all security staff is aware of this process.
- IV. Sick Call Request forms are collected daily by health services staff. All Sick Call requests will be date stamped and initialed upon receipt in the health services department the same day as collected.
- V. Sick call requests will be screened within 24 hours of receipt in the health services department. The individual responsible for screening the sick call requests will assess each request for emergent needs. The screener will sign each request. The signature will indicate the screener's professional title or license. Designated screeners are as follows:
 - Medical complaints: Licensed vocational nurse, registered nurse, midlevel provider, or physician
 - Dental complaints: dentist, dental hygienist, licensed vocational nurse, or registered nurse
 - Mental Health complaints: mental health staff, qualified mental health professional, licensed vocational nurse, or registered nurse
- VI. Offenders with complaints of recent seizure, altered mental status, suicidal ideation, chest pain, shortness of breath, difficulty breathing, abdominal pain, or other possible emergent or urgent conditions, will be afforded immediate access to health services for assessment. Offenders found to not require emergent or urgent care may be advised to continue with the routine sick call process.
- VII. Each facility may institute special Routine or Maintenance Care Clinics to be held

CORRECTIONAL MANAGED HEALTH CARE POLICY MANUAL	Effective Date: 11/17/2011	NUMBER: E-37.1 Page 3 of 5
	Replaces: 12/3/2009 (E37.1) 6/1/2009 (E38.1)	
	Formulated: 10/85 Reviewed: 11/11	
DAILY PROCESSING OF HEALTH COMPLAINTS AND SICK CALL		

periodically based upon volume and need to address specific offender requests for routine services such as nail clipping, visual acuity checks, PAP smears, etc. These special Clinics will not be held to Access to Care timelines but must be held at least every 30 days.

- VIII. Each facility will have a process to ensure all sick call requests are documented in the health care record with all complaints listed and the date and time the Sick Call Request was received in the health care services department noted. Sick Call Requests will be scanned into the electronic medical record (EMR) - or placed in the physical medical chart if there is no EMR available - within 72 hours of the receipt of the Sick Call Request.
- IX. The original SCR must be returned to the offender.
- X. A copy of each SCR must be filed chronologically by discipline and retained in the medical department until authorization is received for destruction.
- XI. A "Written Response Only" is acceptable for certain sick call requests.
- A "Written Response Only" should be delivered to the offender within 2 business days of receipt of the SCR.
 - A "Written Response Only" is never acceptable for any Sick Call Request communicating possible emergent or urgent signs or symptoms.
 - SCRs may be answered with a "Written Response Only" in situations including but not limited to the following:
 - Administrative questions – e.g. "When is my appointment?", "What are my restrictions?" etc.
 - Requests for services that are scheduled for the next available Routine or Maintenance Clinic. Appointment date should not exceed 30 days from receipt of the SCR.
 - Requests for medication refills, but the provider must determine if the offender needs to be evaluated or if clinical or laboratory monitoring is indicated.
 - Complaints evaluated by a provider within the prior 7 days. However, the provider must review the sick call request and document his/her clinical decision that the offender does not need to be seen.
 - More than one complaint for the same non-emergent/non-urgent condition within 14 days that has not been physically examined must be scheduled for a nursing or provider sick call visit within

CORRECTIONAL MANAGED HEALTH CARE POLICY MANUAL	Effective Date: 11/17/2011	NUMBER: E-37.1 Page 4 of 5
	Replaces: 12/3/2009 (E37.1) 6/1/2009 (E38.1)	
	Formulated: 10/85 Reviewed: 11/11	
DAILY PROCESSING OF HEALTH COMPLAINTS AND SICK CALL		

- 72 hours of receipt of the second SCR
 - Offenders are not to be sent Written Responses in the form of a question. If additional information is required, the offender must be seen in person.
- XII. An offender complaining of clinical signs or symptoms or specifically requesting to be seen in the SCR must be seen by a licensed healthcare worker within 72 hours of receipt of the SCR.
 - For dental complaints, the sick call visit is to be a face-to-face or telemedicine encounter performed by a nurse, medical/dental provider, or dental hygienist.
 - For medical complaints, the sick call visit is to be a face to face or telemedicine encounter performed by a nurse or medical provider.
- XIII. When necessary, the offender is referred to a midlevel provider, physician, or dentist. The time frame for an appointment with a midlevel provider, physician, or dentist is based upon the acuity of the presenting symptoms but the offender must be seen within **10 business** days of receipt of the original SCR.
 - Offenders referred to Dental Services by nursing sick call will be seen by a dentist within **10 business** days of the original complaint.
 - Offenders referred to a medical provider by nursing sick call will be seen by a provider within **10 business** days of the original complaint.
- XIV. If an offender reports to nursing sick call more than two times over a 14 day period with the same complaint and has not seen a midlevel provider or physician, he/she will receive an appointment to do so within 7 days.
- XV. Offenders requesting or referred for mental health services will be interviewed within 72 hours of receipt of the SCR or notification by mental health staff, nurse, midlevel provider, or physician to determine urgency of need as follows:
 - **Urgent Mental Health needs** – refer immediately to Qualified Mental Health Professional (QMHP). A qualified mental health professional is a person qualified to evaluate and treat mental disorders consistent with state law.

Urgent complaints include but are not limited to risk of suicide or injury to self or others, acute distress or agitation and **certain** medication side effects.

 - **Non-urgent Mental Health needs** – refer to QMHP within 10 business days.

CORRECTIONAL MANAGED HEALTH CARE POLICY MANUAL	Effective Date: 11/17/2011	NUMBER: E-37.1 Page 5 of 5
	Replaces: 12/3/2009 (E37.1) 6/1/2009 (E38.1)	
	Formulated: 10/85 Reviewed: 11/11	
DAILY PROCESSING OF HEALTH COMPLAINTS AND SICK CALL		

- **Request/complaint not mental health related** – refer patient to the appropriate department and follow-up on further requests or referrals.
- Offenders already on the Mental Health caseload need not be referred to a QMHP if other Mental Health Staff can resolve the offender's issues.

XVI. Referrals for Mental Health Services from outside the health services department (i.e. security, chaplain, or educator) will be acted upon in the same manner as a Sick Call Request received from the offender.

XVII. If an offender reports to sick call for a mental health complaint more than two times over a 14 day period with the same complaint and has not seen a Qualified Mental Health Professional, he/she will receive an appointment to do so within 7 days.

Index: Sick call
Access to Care

Reference: 2010 ACA Standard 4-4346 (Ref. 3-4353) Clinical Services
TDCJ Administrative Directive AD-06.07 (rev 3) Feb 3, 2003, Access to Health Services
Occupations Code Title 3, Health Professions, Subtitle B. Physicians, Ch 157 Authority of Physician to Delegate Certain Medical Acts

BUSINESS RECORDS AFFIDAVIT**STATE OF TEXAS**§
§
§**COUNTY OF WALKER**

BEFORE ME, the undersigned authority, personally appeared, Kelli Ward, who, being duly sworn by me, deposed as follows:

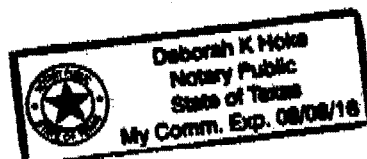

"My name is Kelli Ward. I am over 18 years of age, of sound mind, capable of making this affidavit, and have personal knowledge of the facts herein stated:

I am employed as the Manager of Offender Grievance for the Texas Department of Criminal Justice (TDCJ). I am the custodian of the Offender Grievance Records for the TDCJ, and these records were kept in the regular course of business, and it is the regular course of business for an employee or representative of the TDCJ, with knowledge of the act, event, condition, or opinion, recorded to make the record or to transmit information thereof to be included in such record. The record was made at or near the time or reasonably soon thereafter. I have reviewed the grievance records for Offender **McCollum, Larry Gene**, TDCJ #1721640, Cause Number 3:12CV2037, for the specified time period of July 2011 to the present and found no records on file."



Kelli Ward
Manager, Offender Grievance
Texas Department of Criminal Justice

SWORN TO AND SUBSCRIBED before me on this the 6th day of August, 2013.



 NOTARY PUBLIC in and for
 The State of Texas

Texas Department of Criminal Justice

INSTITUTIONAL DIVISION

Inter-Office Communications

To Warden Pringle

Date December 11, 2012

From P Escobedo/Chief of Classification  Subject McCollum, Larry #1721640

Be advised offender McCollum, Larry #1721640 arrived at Hutchins State Jail on July 18, 2011. When offenders arrive from the county jails they are housed in the next available bunk in our transient housing for processing. The offender was placed in C4-1 housing, which is a lower bunk. Offender McCollum was then moved to C6-34 bunk, which is a top bunk on July 18, 2011. Also on July 18, 2011 offender McCollum was moved to C7-46, a top bunk, where he remained for the rest of his stay. The offender only maintains a bottom bunk if the medical personnel checking in the incoming chain notifies count room staff the offender will require a bottom bunk while in processing. Mrs. P. Lopez, Admin Tech II Count Room, made the moves with the authorization of P. Meshack, Chief of Unit Classification at the time.

Thank you,

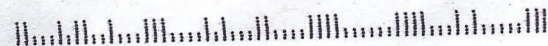
P. Escobedo

Larry Mc Collum #1721640
Hutchins State Jail
1500 E. LANGDON RD.
DALLAS, TX 75241

27 JUL 2011 4:49 PM

Sandra Mc Collum
4022 E. Harris #9
Waco, Tx 76705

76705310109



**TEXAS DEPARTMENT
OF CRIMINAL JUSTICE
OFFICE OF THE INSPECTOR GENERAL**

Michael Keck
Investigator

Hutchins State Jail
1500 East Langdon Road
Dallas, Texas 75241

Office: (972) 225-1304 x 6342
Fax: (469) 941-3909
State Cell: (972) 207-6826

michael.keck@tdcj.state.tx.us



Parkland

Kristi

Pastoral Care Department

Appendix 1396

5201 Harry Hines Blvd. | Dallas, TX 75235
214-590-8512 | 214-590-2620 fax

PS Sam never
Appendix 397

Wed 7-18

Hello Baby!

I love you, good to write you again sorry this will be short
 Send names Address with zip on
 who wants to come see me: you
 already on list, I put Dec down
 But got wrong name they told me
 to put our address send them
 soon. I love you. Hold up on
 your letters they are making me
 all the time. I will write again
 when I get settled look in South
 to a 2 hour contact visit can't
 wait you will have to bring our
 marriage license. We got into the van
 Kri and they said welcome to H&K
 They are right love you Baby
 Harry

Ps I set up a phone deal indomina
 folks the parents OK Talk to you soon

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

STEPHEN McCOLLUM,
STEPHANIE KINGREY, and
SANDRA McCOLLUM,
individually and as
heirs at law to the
Estate of LARRY GENE
McCOLLUM,
Plaintiffs,

VS Â§ CIVIL ACTION NO.
Â§ 3:12-cv-02037

BRAD LIVINGSTON, JEFF
PRINGLE, and the TEXAS
DEPARTMENT OF CRIMINAL
JUSTICE,
Defendants.

ORAL AND VIDEOTAPED DEPOSITION OF

KAREN SUE TATE

FEBRUARY 7, 2013

ORAL AND VIDEOTAPED DEPOSITION OF KAREN SUE TATE, produced as a witness at the instance of the PLAINTIFFS, and duly sworn, was taken in the above-styled and numbered cause on the 7th day of February, 2013, from 3:57 p.m. to 5:49 p.m., before TINA TERRELL BURNEY, CSR in and for the State of Texas, reported by machine shorthand, at the Hutchins State Jail, 1500 E. Langdon Road, Dallas, Texas 75241, pursuant to the Federal Rules of Civil Procedure.


<p style="text-align: right;">2</p> <p>1 APPEARANCES</p> <p>2 FOR THE PLAINTIFFS:</p> <p>3 Mr. Scott Medlock</p> <p>4 Mr. Jeff Edwards</p> <p>5 THE EDWARDS LAW FIRM</p> <p>6 The Bremond Houston House</p> <p>7 706 Guadalupe</p> <p>8 Austin, Texas 78701</p> <p>9 jeff@edwards-law.com</p> <p>10 scott@edwards-law.com</p> <p>11</p> <p>12 FOR THE DEFENDANTS:</p> <p>13 Mr. David A. Harris</p> <p>14 Mr. Bruce R. Garcia</p> <p>15 OFFICE OF THE ATTORNEY GENERAL</p> <p>16 P.O. Box 12548</p> <p>17 Austin, Texas 78711-2548</p> <p>18 512.463.2080 Fax 512.495.9139</p> <p>19 bruce.garcia@oag.state.tx.us</p> <p>20 david.harris@oag.state.tx.us</p> <p>21</p> <p>22 ALSO PRESENT:</p> <p>23 Mr. Jeremy Gilliam (Videographer)</p> <p>24 512.565.4799</p> <p>25 Warden Pringle</p>	<p style="text-align: right;">4</p> <p>1 PROCEEDINGS</p> <p>2 THE VIDEOGRAPHER: We are going on the</p> <p>3 record February 7, 2013. The time is approximately 3:57</p> <p>4 p.m. Will the court reporter please swear in the</p> <p>5 witness?</p> <p>6 KAREN SUE TATE,</p> <p>7 having been first duly sworn, testified as follows:</p> <p>8 BY MR. MEDLOCK:</p> <p>9 Q. Sergeant Tate --</p> <p>10 A. Yes.</p> <p>11 Q. -- my name is Scott Medlock. I am an</p> <p>12 attorney, and I represent the family of Larry Gene</p> <p>13 McCollum. Do you understand that?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And you understand that Mr. McCollum's</p> <p>16 family has brought a lawsuit against TDCJ and the State</p> <p>17 of -- some officials of the State of Texas?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Have you ever been deposed before or</p> <p>20 testified --</p> <p>21 A. No, I have not.</p> <p>22 Q. -- before. Okay.</p> <p>23 MR. HARRIS: Let him finish his question.</p> <p>24 I know it's been a long day, but let him finish his</p> <p>25 question. It will go a lot quicker.</p>
<p style="text-align: right;">3</p> <p>1 INDEX</p> <p>2 PAGE</p> <p>3 Appearances..... 2</p> <p>4 WITNESS: KAREN SUE TATE</p> <p>5 Examination by Mr. Medlock..... 4</p> <p>6 Signature and Changes..... 78</p> <p>7 Reporter's Certificate..... 80</p> <p>8</p> <p>9</p> <p>10 EXHIBITS</p> <p>11 NO. DESCRIPTION PAGE</p> <p>12 17 Risk Management Training on Heat-Related</p> <p>13 Incidents 5/11/11..... 19</p> <p>14</p> <p>15 18 7/19/111 Temperature Logs..... 33</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">5</p> <p>1 THE WITNESS: Yes, sir.</p> <p>2 Q. Let -- I'm just -- just like your attorney</p> <p>3 was, I'm going to go over some kind of ground rules for</p> <p>4 the deposition with you first. Please do let me finish</p> <p>5 my question before you give your answer. I'll try and</p> <p>6 let you finish your answer before I ask the next</p> <p>7 question. That's as much for the court reporter as for</p> <p>8 anybody else, because she needs to be able to take down</p> <p>9 everything that's being said in here.</p> <p>10 Do you understand that?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Your -- thank you for saying yes aloud.</p> <p>13 Because she's taking everything down, she can't record</p> <p>14 things like uh-huh or huh-uh, or they look ambiguous on</p> <p>15 the transcript that she's going to produce. So if you</p> <p>16 could keep your answers to something audible and yes or</p> <p>17 no instead of uh-huh or huh-uh.</p> <p>18 A. Okay.</p> <p>19 Q. Does that make sense?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. If you don't hear my question, will you</p> <p>22 say so?</p> <p>23 A. Yes, sir.</p> <p>24 Q. And if you don't understand my question, will</p> <p>25 you say so?</p>

<p style="text-align: right;">26</p> <p>1 of 2011?</p> <p>2 A. Yes, sir.</p> <p>3 Q. And you see that there's a little picture of</p> <p>4 an ambulance under the description of heat stroke where</p> <p>5 it says, again, that it's a -- do you see -- see the</p> <p>6 picture of the ambulance?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Does that imply to you that, again, this is a</p> <p>9 medical emergency, and someone needs to be put in an</p> <p>10 ambulance?</p> <p>11 A. Yes, sir.</p> <p>12 Q. And in the top of the third column at the end</p> <p>13 of that first paragraph it says, "Always transfer heat</p> <p>14 stroke victims to a medical facility." Do you see that?</p> <p>15 A. Yes, sir.</p> <p>16 Q. At the Hutchins Unit, there are no medical</p> <p>17 staff during the night shift; is that right -- or there</p> <p>18 were not in the summer of 2011?</p> <p>19 A. On site, no, sir.</p> <p>20 Q. So you would have known in July of 2011 that</p> <p>21 if someone was going to get to a medical facility to get</p> <p>22 any medical attention at all, it would have to be off of</p> <p>23 the Hutchins Unit; is that right?</p> <p>24 A. Yes, sir.</p> <p>25 Q. Okay. Is there still no medical staff at the</p>	<p style="text-align: right;">28</p> <p>1 an emergency?</p> <p>2 A. If applicable, yes, sir.</p> <p>3 Q. When would you use it? Like if someone is</p> <p>4 found collapsed having a seizure and is nonresponsive,</p> <p>5 would you take him to DMS?</p> <p>6 A. It depends -- not necessarily, sir.</p> <p>7 Q. What would it depend on?</p> <p>8 A. The extent of the seizure, sir.</p> <p>9 Q. If they remained unresponsive, would you take</p> <p>10 them to DMS?</p> <p>11 A. Yes, and notify them by phone immediately.</p> <p>12 Q. Okay. So you would call -- why would you do</p> <p>13 that?</p> <p>14 A. To notify them. They have access to the</p> <p>15 medical records if they have medical records built.</p> <p>16 Q. Okay. So you would do that to see what</p> <p>17 information the Crain Unit had on them?</p> <p>18 A. And see what treatment they wanted us to go</p> <p>19 with.</p> <p>20 Q. Okay. Would you always do that before calling</p> <p>21 911?</p> <p>22 A. Not necessarily, sir.</p> <p>23 Q. Okay. Well, let's take a step back. As a</p> <p>24 sergeant, could you call 911?</p> <p>25 A. I would notify my immediate supervisor first.</p>
<p style="text-align: right;">27</p> <p>1 Hutchins Unit during the night shift?</p> <p>2 A. No, sir.</p> <p>3 Q. So it's -- it would still be true today that</p> <p>4 if someone was going to get medical attention during the</p> <p>5 night shift, it would have to be off of the Hutchins</p> <p>6 Unit?</p> <p>7 A. We do have DMS where we contact the Crain</p> <p>8 Unit.</p> <p>9 Q. What -- for the jury, what's DMS?</p> <p>10 A. I'm not real sure what the DMS stands for,</p> <p>11 Medical System, I know that, Direct Medical System or...</p> <p>12 MR. HARRIS: If you don't know, just say</p> <p>13 you don't know.</p> <p>14 A. I don't know exactly, no.</p> <p>15 Q. How does it work? From what you do know, what</p> <p>16 is it?</p> <p>17 A. The offender, if able, is taken before --</p> <p>18 taken into medical, and the Crain Unit is notified, and</p> <p>19 they come on a television and actually look and talk to</p> <p>20 the offender.</p> <p>21 Q. So it's like a telemedicine?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Okay. Would you always use the DMS for</p> <p>24 someone who was having a -- would you have -- let me</p> <p>25 start over. Would you use DMS for someone who is having</p>	<p style="text-align: right;">29</p> <p>1 Q. That would be the lieutenant?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Would you -- according to the policies here at</p> <p>4 the Hutchins Unit, and the practice and procedure that</p> <p>5 you follow, can you, as a sergeant, pick up the phone</p> <p>6 and call 911?</p> <p>7 A. I would notify my lieutenant.</p> <p>8 Q. You have to notify your lieutenant before</p> <p>9 calling 911?</p> <p>10 A. I would notify my lieutenant.</p> <p>11 Q. You would. Okay. Is there a policy or</p> <p>12 procedure that says you have to notify your lieutenant</p> <p>13 before calling 911?</p> <p>14 A. No, sir, I don't believe so.</p> <p>15 Q. Is that how you've been instructed to contact</p> <p>16 911, that you go through the lieutenant first?</p> <p>17 A. I go through -- I mean, we've always called</p> <p>18 ranking officers. I would call the lieutenant.</p> <p>19 Q. Who told you that you needed to call a ranking</p> <p>20 officer before you called 911?</p> <p>21 A. No one.</p> <p>22 Q. That's just the way things are done here at</p> <p>23 the Hutchins Unit?</p> <p>24 A. Through the chain of command, I would contact</p> <p>25 my lieutenant.</p>

<p style="text-align: right;">30</p> <p>1 Q. Okay. Officer Clark had similar testimony,</p> <p>2 that he would go through the chain of command before</p> <p>3 calling 911. Is that how things are done here at the</p> <p>4 Hutchins Unit, you go through your chain of command</p> <p>5 before you call 911?</p> <p>6 A. I would.</p> <p>7 Q. You would. Do you know if everybody would</p> <p>8 here at the Hutchins Unit?</p> <p>9 A. I can't speak for everyone.</p> <p>10 Q. Is that the way things are supposed to be done</p> <p>11 at the Hutchins Unit?</p> <p>12 A. That's the way I do it.</p> <p>13 Q. Okay. And you do things the ways things are</p> <p>14 supposed to be done?</p> <p>15 A. I try to, sir.</p> <p>16 Q. Okay. Is there anything that you know of that</p> <p>17 would prevent you from using the DMS system and calling</p> <p>18 911 at the same time?</p> <p>19 A. No, sir.</p> <p>20 Q. So you could do that? You could call DMS and</p> <p>21 call 911 at the same time?</p> <p>22 A. Yes, sir.</p> <p>23 Q. And just to be clear, did the DMS system exist</p> <p>24 in the -- in July of 2011?</p> <p>25 A. I believe so, sir.</p>	<p style="text-align: right;">32</p> <p>1 A. Yes, sir.</p> <p>2 Q. What do you do?</p> <p>3 A. I ask them questions referring to the training</p> <p>4 material.</p> <p>5 Q. Okay. So you'll ask -- you'll say, Officer</p> <p>6 Clark, do you know whatever training material you just</p> <p>7 explained and see if he was paying attention?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Something like that. Okay. Do you do</p> <p>10 anything else? Do they have like an exam that they have</p> <p>11 to take or...</p> <p>12 A. No, sir.</p> <p>13 Q. Anything else that you do to make sure that</p> <p>14 the officers are paying attention?</p> <p>15 A. Just go over the material, sir.</p> <p>16 Q. Have you ever seen this document or a document</p> <p>17 like it before, Sergeant?</p> <p>18 A. This is from the back gate.</p> <p>19 Q. Is that from the -- what you call G Control?</p> <p>20 A. No, sir.</p> <p>21 Q. Okay.</p> <p>22 MR. MEDLOCK: Let's go ahead and mark --</p> <p>23 we haven't marked this one yet, have we, guys?</p> <p>24 MR. HARRIS: I think you marked something</p> <p>25 similar to that in the officer's deposition, but I don't</p>
<p style="text-align: right;">31</p> <p>1 Q. Okay. Do you know -- the DMS would just</p> <p>2 connect you with who? How -- do you know who the DMS</p> <p>3 system would connect you with? Would it be a doctor or</p> <p>4 a registered nurse?</p> <p>5 A. A registered nurse.</p> <p>6 Q. A registered nurse. Okay. So would you ever</p> <p>7 see a doctor through the DMS system?</p> <p>8 A. I have not, sir.</p> <p>9 Q. Okay. So then you were aware in July of 2011</p> <p>10 that if someone was going to see a doctor, it would have</p> <p>11 to -- it wouldn't be through DMS?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Okay. I want you to go back to your -- the</p> <p>14 training roster, Exhibit 17. Can you look and see if</p> <p>15 Officer Clark attended that training?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Officer Clark did attend?</p> <p>18 A. Yes, sir.</p> <p>19 Q. How about Officer Jolayemi?</p> <p>20 A. Yes, sir.</p> <p>21 Q. She did as well?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Okay. Do you -- when you do the training, do</p> <p>24 you do anything to make sure that the officers are</p> <p>25 actually paying attention?</p>	<p style="text-align: right;">33</p> <p>1 know if it was that one or not.</p> <p>2 MR. MEDLOCK: I only would have used one.</p> <p>3 MR. GARCIA: No, you didn't mark it</p> <p>4 because he didn't recognize it.</p> <p>5 MR. MEDLOCK: That's what I thought.</p> <p>6 Okay.</p> <p>7 (Exhibit 18 marked.)</p> <p>8 MR. HARRIS: Is it 18?</p> <p>9 THE WITNESS: Yes, sir.</p> <p>10 Q. How do you know this record was made at the</p> <p>11 back -- from the back gate, Sergeant?</p> <p>12 A. I recognize the officers' names, as well as</p> <p>13 this is from the time the gate is manned.</p> <p>14 Q. Okay. Do you know if the temperatures at the</p> <p>15 Hutchins Unit were being recorded at the back gate?</p> <p>16 A. At what time?</p> <p>17 Q. At the times listed. Let's read -- let me ask</p> <p>18 a different question. Do you know -- from the officers</p> <p>19 working that are listed here, it's your understanding</p> <p>20 that they would have been working at the back gate, so</p> <p>21 the temperatures would have been recorded there at the</p> <p>22 back gate; is that right?</p> <p>23 A. Yes, sir.</p> <p>24 Q. Okay. And from your understanding, is this</p> <p>25 the document that the temperatures are recorded on and</p>

78	80
<p>1 CHANGES AND SIGNATURE</p> <p>2 WITNESS: KAREN SUE TATE</p> <p>3 DATE OF DEPOSITION: FEBRUARY 7, 2013</p> <p>4 PAGE LINE CHANGE REASON</p> <p>5 _____</p> <p>6 _____</p> <p>7 _____</p> <p>8 _____</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 _____</p> <p>20 _____</p> <p>21 _____</p> <p>22 _____</p> <p>23 _____</p> <p>24 _____</p> <p>25 _____</p>	<p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE NORTHERN DISTRICT OF TEXAS</p> <p>3 DALLAS DIVISION</p> <p>4 STEPHEN McCOLLUM,</p> <p>5 STEPHANIE KINGREY, and</p> <p>6 SANDRA McCOLLUM,</p> <p>7 individually and as</p> <p>8 heirs at law to the</p> <p>9 Estate of LARRY GENE</p> <p>10 McCOLLUM,</p> <p>11 Plaintiffs,</p> <p>12</p> <p>13 VS Â§ CIVIL ACTION NO.</p> <p>14 Â§ 3:12-cv-02037</p> <p>15 BRAD LIVINGSTON, JEFF</p> <p>16 PRINGLE, and the TEXAS</p> <p>17 DEPARTMENT OF CRIMINAL</p> <p>18 JUSTICE,</p> <p>19 Defendants.</p> <p>20</p> <p>21 -----</p> <p>22 REPORTER'S CERTIFICATION</p> <p>23 ORAL AND VIDEOTAPED DEPOSITION OF</p> <p>24 KAREN SUE TATE</p> <p>25 FEBRUARY 7, 2013</p> <p>-----</p> <p>I, Tina Terrell Burney, Certified Shorthand Reporter in and for the State of Texas, hereby certify to the following:</p> <p>That the witness, KAREN SUE TATE, was duly sworn by the officer and that the transcript of the oral deposition is a true record of the testimony given by the witness;</p>
79	81
<p>1 _____</p> <p>2 I, KAREN SUE TATE, have read the foregoing</p> <p>3 deposition and hereby affix my signature that same is</p> <p>4 true and correct, except as noted above.</p> <p>5</p> <p>6 _____</p> <p>7 KAREN SUE TATE</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 I further certify that pursuant to FRCP Rule</p> <p>2 30(f)(1) that the signature of the deponent:</p> <p>3 _____ was requested by the deponent or a</p> <p>4 party before the completion of the deposition and is to</p> <p>5 Be returned within 30 days from date of receipt of the</p> <p>6 transcript. If returned, the attached Changes and</p> <p>7 Signature Page contains any changes and the reasons</p> <p>8 therefor;</p> <p>9 _____ was not requested by the deponent or a</p> <p>10 party before the completion of the deposition.</p> <p>11 I further certify that I am neither attorney</p> <p>12 or counsel for, nor related to or employed by, any of</p> <p>13 the parties or attorneys to the action in which this</p> <p>14 deposition was taken. Further, I am not a relative or</p> <p>15 employee of any attorney of record in this case, nor am</p> <p>16 I financially interested in the outcome of the action.</p> <p>17 Subscribed and sworn to on this the _____</p> <p>18 day of February, 2013.</p> <p>19</p> <p>20</p> <p>21</p> <p>22 _____</p> <p>23 TINA TERRELL BURNEY</p> <p>24 Texas CSR No. 2908</p> <p>25 Expiration Date: 12/31/14</p> <p>WRIGHT WATSON & ASSOCIATES, L.L.C.</p> <p>3307 Northland Drive, Suite 185</p> <p>Austin, Texas 78731</p> <p>800.375.4363 Fax 512.474.8802</p> <p>Firm Registration No. 225</p>

21 (Pages 78 to 81)

		City of Hutchins 321 North Main St. HUTCHINS, TX 75141 972-225-3311		AMBULANCE RECORD 6778032 (wpharvill) Page 1 of 5	
		Trip Information			
Incident#: 11-573	Date 07-22-2011	Station Station 1	Responding Unit Medic 701		
Dispatched As Convulsions/Seizure		Found To Be Convulsions/Seizure	Patient Disposition Transport and treatment		
Department Directive					
Dispatched 03:05	Enroute 03:09	Amb On Loc 03:12	Pt Contact 03:23	Depart Loc 03:36	Arrive Hosp 03:54
Pickup Hutchins State Jail 1101 E. Langdon HUTCHINS, TX 75141			Destination Parkland Hospital East ER 5201 Harry Hines DALLAS, TX 75235		
Response To Scene		Response From Scene		Lights & Sirens	
Map Page		Miles Transported		15.00	
County		DALLAS		County	
		DALLAS		DALLAS	
		Number of Patients Transported		1	
Patient Information					
Patient Name McCollum, Larry		TDCJ # 1721640	Gender Male	Ethnicity	
Patient Residence 1101 E. Langdon HUTCHINS TX 75141		Date of Birth 01-01-1900 (111 YO)	DL TEXAS		
Phone (H)	Phone (W)	Height 6' 0"	Weight 400.00 lbs	SSN	
Patient Information					
Allergies		Unknown			
Medications		Unknown			
History		Unknown			
Chief Complaint		Convulsions/Seizure			
Cardiac					
Cardiac Arrest No		Etiology		Resuscitation Attempt	
Initial Patient Assessment An ALS Assessment was Performed and Warranted					
LOC AAOx1	BP 136/108	SpO2 80% RA	ETCO2		
Breath Sounds Upper Left: Clear Right: Clear	Breath Sounds Lower Left: Clear Right: Clear		Resp Rate 14	Pulses Left: Radial Right: Radial	
Pulse Rate 127	Pupils Left: PERRL Right: PERRL	Capillary Refill Instant			
Skin Color Pale	Skin Moisture Wet	Skin Temp Hot	Skin Appearance		
Blood Glucose 200 mg/dL					
Glasgow Coma Score					
GCS Total 8	Eye Opening	Verbal Response	Motor Response	RTS 10	
Electronically Signed Harvill, William P (EMT-P) Crew #1 Pressler, Terry D (EMT-P) Crew #2 Patient Name: McCollum, Larry Incident Date: 07-22-2011					



City of Hutchins
321 North Main St.
HUTCHINS, TX 75141
972-225-3311

AMBULANCE RECORD

6778032 (wpharvill)
Page 2 of 5

Sequence Chart				
Date	Time	Event	By	Description
07-22-2011	03:05	Dispatched		
07-22-2011	03:09	Enroute		
07-22-2011	03:12	On Location		
07-22-2011	03:23	Patient Contact		
07-22-2011	03:25	Other Event		Moved patient out of cell
07-22-2011	03:30	Vitals	TD P	BP 136/108, Pulse 127, Respirations 12, SPO2 80% on RA taken by Pressler, Terry D.
07-22-2011	03:31	Oxygen	WP H	15.00 LPM per on Scene medical direction. The Patient's condition was .
07-22-2011	03:33	Vitals	WP H	BP 134/106, Pulse 124, Respirations 12, SPO2 96% on O2 taken by Harvill, William P.
07-22-2011	03:33	Blood Sugar Level	TD P	Blood Sugar monitoring was performed by Pressler, Terry D and found to be 200 mg/dL.
07-22-2011	03:33	Other Event	WP H	Temp 106 Degree F
07-22-2011	03:34	EKG	WP H	Sinus Tachycardia.
07-22-2011	03:35	IV/IO	TD P	A 18g was attempted by Pressler, Terry D without success. Blood was not drawn.
07-22-2011	03:36	Departed Location		
07-22-2011	03:37	Cold Pack	WP H	Neck and under arms
07-22-2011	03:40	Report Called	WP H	Report Called to RN via Phone.
07-22-2011	03:54	Arrived Destination		
07-22-2011	03:54	Assessment	WP H	Patient never changed condition
07-22-2011	03:54	Vitals	WP H	BP 134/106, Pulse 122, Respirations 12, SPO2 97% on O2 taken by Harvill, William P.
07-22-2011	04:21	In Service		

Patient Assessment at Destination				
LOC AAOx1	BP 132/106	SpO2 97% O2	ETCO2	
Breath Sounds Upper Left: Clear Right: Clear	Breath Sounds Lower Left: Clear Right: Clear		Resp Rate 12	Pulses Left: Radial Right: Radial
Pulse Rate 122	Pupils Left: Fixed,Dilated Right: Fixed,Dilated	Capillary Refill 1-2 seconds		
Skin Color Pale	Skin Moisture Moist	Skin Temp Hot	Skin Appearance	
Blood Glucose 200 mg/dL				

Electronically Signed

Harvill, William P (EMT-P) Pressler, Terry D (EMT-P)
Crew #1 Crew #2

Patient Name: McCollum, Larry | Incident Date: 07-22-2011



City of Hutchins
321 North Main St.
HUTCHINS, TX 75141
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AMBULANCE RECORD

6778032 (wpharvill)
Page 3 of 5

Narrative

Subjective:

Medic 701 dispatched to convulsions/seizure call and found male patient complaining of Convulsions/Seizure. Bystander states loss of consciousness. Bystander witnessed seizure activity.

Objective:

Patient offered no communication. Upon EMS arrival, patient was lying supine. Patient had an irregular gait. Patient was unconscious.

Systemic Information - Assessment

Skin: Hot Wet
Head / Neck: Temp 106 degree F
Chest: Clear
Abdomen: Soft
Extremities: FULL ROM
Head/Face: Normal
Neck: Normal
Heart: Normal
Abdomen Left Upper: Normal
Abdomen Left Lower: Normal
Abdomen Right Upper: Normal
Abdomen Right Lower: Normal
GU Assessment: Normal
Back Cervical: Normal
Back Thoracic: Normal
Back Lumbar/Sacral: Normal
Extremities-Right Upper: Normal
Extremities-Right Lower: Normal
Extremities-Left Upper: Normal
Extremities-Left Lower: Normal

General: AAOx1, Initial BP 136/108, Pulse 127, Respirations 14 and snoring
Monitors: SPO2 80% RA

Assessment:

Plan:

Male patient found complaining of Convulsions/Seizure postictal. Initial assessment as indicated. Pulse rate was 127. Respirations were 14 and snoring. Initial blood pressure was 136/108. Initial SpO2 was 80% RA. Patient contact made at time indicated above. Oxygen was applied at 15 LPM via Re-breather mask. The patient's condition improved. Blood Sugar monitoring was performed by Pressler, Terry D (EMT-P) and found to be 200 mg/dL. An EKG was performed by Harvill, William P (EMT-P). The patient's rhythm was Sinus Tachycardia in lead IIA. 18g Antecubital-Left IV was attempted by Pressler, Terry D (EMT-P) without success. Cold pack applied to Neck and under arms. A patient report was called in to the receiving facility. An additional assessment was performed, as indicated. Patient was transported lights & sirens to Parkland Hospital East ER and released to staff. Upon transfer of patient care to ED staff, the patient's symptoms remained unchanged.

Electronically Signed

Harvill, William P (EMT-P) Pressler, Terry D (EMT-P)
Crew #1 Crew #2

Patient Name: McCollum, Larry | Incident Date: 07-22-2011



City of Hutchins
321 North Main St.
HUTCHINS, TX 75141
972-225-3311

AMBULANCE RECORD

6778032 (wpharvill)
Page 4 of 5

Image 1/1

Assignment of Benefits/HIPAA Acknowledgement Form

I understand that I am financially responsible for the services provided to me by City of Hutchins. I request that payment of authorized Medicare, Medicaid, or other insurance benefits be made on my behalf to City of Hutchins for any services provided to me by City of Hutchins now or in the future. I agree to immediately remit to City of Hutchins any payments that I receive directly from any source whatsoever for the services provided to me now or in the future. I assign all rights and/or benefits to such payments to City of Hutchins for compensation of services provided to me now or in the future.

I authorize and direct any holder of medical information or documentation about me to release such information to the Centers for Medicare and Medicaid Services and its carriers and agents, and/or City of Hutchins and its billing agents, and/or any other payers or insurers, as may be necessary to determine these benefits or other benefits payable for services provided to me by.

☒ Yes, I acknowledge that I have received a copy of City of Hutchins Notice of Privacy Practices.

A copy of this form is as valid as the original.

Patient Release of Responsibility

____ (Patient's initials) I have been informed of the reason the emergency medical personnel feel that I should go to the emergency center for further evaluation.

____ (Patient's initials) I have been informed of the evaluation and/or treatment that may/will occur at the emergency center.

____ (Patient's initials) I have been informed of the consequences and/or complications that may result due to my refusal to go to the emergency center for further evaluation.

Initial one of the following:

____ I, the undersigned, have been advised that emergency medical treatment on my/the patient's behalf is necessary, and that refusal of recommended treatment and transport to an emergency center may result in death, or imperil my/the patient's health by increasing the opportunity for morbidity. Nevertheless, and understanding all of the above, I refuse to accept further emergency medical treatment and/or transportation to an emergency center, assume all risks and consequences resulting from my decision and release Provider Name and its member(s) from any and all liability which may occur from my decision not to accept their recommendation.

____ I accept transport only and refuse all treatment and/or specific treatments which they may render. I have been advised of the possible consequences that may result from the decision not to accept further treatment, and release City of Hutchins and its member(s) from any and all liability that may occur. (Note treatment refused in narrative.)

As a competent adult, I fully understand all of the above, and I am capable of making a rational decision on my behalf.

Witness:

Date:

EMS Assessment

____ Patient was AAO x3

____ Patient denied ETOH or drug use


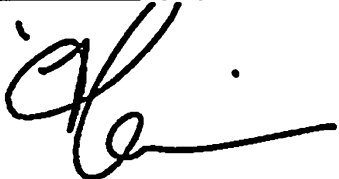

____ Patient denied suicidal/homicidal ideation

Crew Signature: _____

Electronically Signed

Harvill, William P (EMT-P) Pressler, Terry D (EMT-P)
Crew #1 Crew #2

Patient Name: McCollum, Larry | Incident Date: 07-22-2011

	City of Hutchins 321 North Main St. HUTCHINS, TX 75141 972-225-3311	AMBULANCE RECORD 6778032 (wpharvil) Page 5 of 5
Signatures		
	Patient Representative In Custody Law Enforcement	
Signatures		
	Facility Representative	

Electronically Signed

Harvill, William P (EMT-P) Pressler, Terry D (EMT-P)
Crew #1 Crew #2

Patient Name: McCollum, Larry | Incident Date: 07-22-2011

AFFIDAVIT

THE STATE OF TEXAS

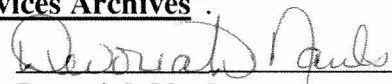
COUNTY OF WALKER

§
§
§

BEFORE ME, the undersigned authority, personally appeared **Devoriah Nauls**, who, being by me duly sworn, deposed as follows:

“My name is **Devoriah Nauls**, and I am over the age of eighteen (18), of sound mind, competent and capable of making this affidavit, and personally acquainted with the facts herein stated:

I am the Correctional Clinical Associate at The University of Texas Medical Branch - Correctional Managed Care, Health Services Archives and my office is located in Huntsville, Texas. In this capacity, I am the individual who can authenticate and certify as official, copies of medical records at the **TDCJ Health Services Archives**. Attached hereto are **443** pages of records, time period **July 1, 2002** to **January 12, 2004** and **July 15, 2011** to **July 28, 2011** from the medical records of **Larry McCollum**, **TDCJ # 1721640, 1105538**. These said records are kept in the regular course of business by an employee or representative of UTMB-Correctional Managed with knowledge of the act, event, condition, opinion or diagnosis, recorded or to transmit information thereof to be included in such record; and the record was made at or near the time or reasonably soon thereafter. The records attached hereto are the original or exact duplicates of the original medical records maintained by **TDCJ Health Services Archives**”.

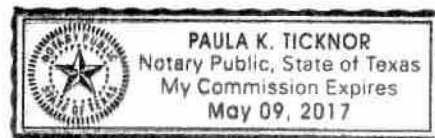

Devoriah Nauls

State of Texas,

County of Walker

Before Me Paula K. Ticknor on this day personally appeared Devoriah Nauls, known to me through her Texas Driver's License to be the person whose name is subscribed to the foregoing instrument and acknowledge to me that she executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office this 17th day of Aug. A.D., 2013



MCCOLLUM 084

Appendix 410



SOUTHWESTERN
INSTITUTE OF FORENSIC SCIENCES
AT DALLAS

Office of the Medical Examiner

Autopsy Report



COPY
DALLAS COUNTY
INSTITUTE OF FORENSIC SCIENCES

Case: IFS-11-10161 - ME

172 1640

Decedent: McCollum, Larry Gene 58 years White Male DOB: 04/04/1953

Date of Death: 07/28/2011 (Actual)

Time of Death: 11:35 PM (Actual)

Examination Performed: 07/29/2011 09:30 AM

ORGAN WEIGHTS:

Brain: 1,600 g	Right Lung: 700 g	Right Kidney: 260 g
Heart: 550 g	Left Lung: 500 g	Left Kidney: 280 g
Liver: 2,590 g	Spleen: 250 g	

EXTERNAL EXAMINATION

The body is identified by tags. Photographs and fingerprints are taken.

The body is received nude. No personal effects or jewelry are present on the body.

The body is that of a normally-developed white male which appears consistent with the recorded age of 58 years. When nude, it measures 70 inches in length and weighs 345 pounds. There is good preservation in the absence of embalming. Rigor mortis is present. Lividity is located on the posterior body surfaces and blanches with pressure. The body is room temperature in the presence of minimal refrigeration.

The hairline is receding and there is short gray hair that is cut very close to the scalp. Mustache and beard stubble are on the face. The irides are brown and there are no petechiae of the bulbar or palpebral surface of the conjunctivae. The ears, nose, and lips are unremarkable. The mouth has natural dentition. The neck is without masses or unusual mobility. The chest and back are unremarkable. The abdomen is protuberant. The extremities are symmetric. The external genitalia, perineum, and anus are unremarkable.

A 1 inch area of indentation and red discoloration is on the right side of the forehead.

IDENTIFYING MARKS AND SCARS

A 3 inch linear scar is obliquely oriented on the right side of the abdomen.

A 2 inch linear scar is on the right temporal scalp.

EVIDENCE OF TREATMENT



Accredited by The National Association of Medical Examiners

RECEIVED

NOV 02 2011 *Gm*

COPED AND SENT
Appendix 411

MCCOLLUM 336

IFS-11-10161

McCollum, Larry Gene



Page 2 of 6

- Cardiac monitor pads affixed to the chest
- Intravascular catheter in upper right arm
- Hospital band encircling left wrist
- Foley catheter
- Rectal catheter connected to plastic bag containing fecal material
- Needle puncture surrounded by ecchymosis in the left inguinal region
- Needle punctures in the right inguinal region, with extravasated blood within the soft tissue and musculature surrounding the right inguinal canal

EVIDENCE OF INJURY

A 1/4 inch purple contusion is on the superior aspect of the bridge of the nose.

Reflection of the scalp reveals a 3 cm area of hemorrhage in the left temporalis muscle along the parietal bone. A 1 inch purple contusion with central abrasion is immediately inferior to the left external ear. Deep to this is a 4 cm area of hemorrhage within the underlying soft tissue.

A 2 cm purple contusion is on the left supraclavicular region. A 2 inch purple to yellow contusion is on the right upper abdomen near the subcostal margin. A few purple contusions measuring between 1 and 2 cm each are on the left side of the chest. A 1/2 inch red abrasion is on the front of the proximal left forearm. A 2 inch purple contusion is on the posterior aspect of the left thigh.

INTERNAL EXAMINATION

BODY CAVITIES: Approximately 300 cc of tan clear fluid are within each pleural cavity. The pericardial and peritoneal cavities contain no adhesions or abnormal collections of blood or other fluid.

HEAD: See EVIDENCE OF INJURY. The dura and dural sinuses are unremarkable. There are no epidural, subdural or subarachnoid hemorrhages. The leptomeninges are thin and delicate. The cerebral hemispheres are symmetrical, with flattened gyri and effaced sulci. There is mild notching of the parahippocampal gyri. The cerebellar tonsils are soft; sections reveal friable, tan-red necrotic parenchyma. The cranial nerves and blood vessels are unremarkable. Sections through the brainstem are unremarkable. Sections through the cerebral hemispheres exhibit diffuse blurring of the gray-white matter junctions. There are no hemorrhages in the deep white matter or the basal ganglia. The cerebral ventricles contain no blood. The spinal cord, as viewed from the cranial cavity, is unremarkable.

NECK: The soft tissues and prevertebral fascia are unremarkable. The hyoid bone and laryngeal cartilages are intact. The lumen of the larynx is not obstructed.

CARDIOVASCULAR SYSTEM: The intimal surface of the abdominal aorta is free of significant atherosclerosis. The aorta and its major branches and the great veins are normally distributed and unremarkable. The pulmonary arteries contain no thromboemboli. The heart is markedly enlarged, with normal contours. The pericardium, epicardium, and endocardium are smooth, glistening, and unremarkable. There are no thrombi in the atria or ventricles. The foramen ovale is closed. The coronary arterial system is free of significant atherosclerosis. The atrial and ventricular septa are intact. The cardiac valves are unremarkable. The myocardium is dark red-brown and firm, and there are no focal



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IFS-11-10161

McCollum, Larry Gene



Page 3 of 6

abnormalities.

RESPIRATORY SYSTEM: The upper airway is unobstructed. The laryngeal mucosa is smooth and unremarkable, without petechiae. The pleural surfaces are smooth and glistening. The major bronchi are unremarkable. Sectioning of the lungs discloses a dark red-blue, moderately congested parenchyma.

HEPATOBIILIARY SYSTEM: The liver is covered by a smooth, glistening capsule. The parenchyma is dark red-brown and moderately congested. The gallbladder contains approximately 10 cc of dark green bile, and one dark green cholesterol stone measuring approximately 2 inches in greatest dimension.

GASTROINTESTINAL SYSTEM: The tongue is grossly normal both externally and upon sectioning. The esophageal mucosa is gray, smooth, and unremarkable. The stomach is empty. There are no tablets or capsules. The gastric mucosa has normal rugal folds, and there are no ulcers. The small and large intestines are externally unremarkable. The appendix is absent. The pancreas is unremarkable externally and upon sectioning.

GENITOURINARY SYSTEM: The capsules of both kidneys strip with ease to reveal smooth and slightly lobulated surfaces. The cortices are of normal thickness, with well-demarcated corticomedullary junctions. The calyces, pelvis, and ureters are unremarkable. The urinary bladder is empty. The mucosa is gray, smooth, and unremarkable. The prostate gland is unremarkable both externally and upon sectioning.

ENDOCRINE SYSTEM: The thyroid and adrenal glands are unremarkable externally and upon sectioning.

LYMPHORETICULAR SYSTEM: The spleen is covered by a smooth, blue-gray, intact capsule. The parenchyma is dark red. The cervical, hilar, and peritoneal lymph nodes are unremarkable.

MUSCULOSKELETAL SYSTEM: The clavicles, ribs, sternum, pelvis, and vertebral column have no fractures. The diaphragm is intact.

MICROSCOPIC EXAMINATION:

Heart: myocyte hypertrophy; increased interstitial and perivascular fibrosis.

Lung: vascular congestion.

Liver: moderate macrovesicular steatosis, mild focal centrilobular necrosis.

Kidney: No significant pathologic alteration is identified.

Spleen: diffuse hypocellularity with depletion of both the red and white pulp.



Accredited by The National Association of Medical Examiners

IFS-11-10161

McCollum, Larry Gene

TOXICOLOGY:



Page 4 of 6

Evidence Submitted:

The following items were received by the Laboratory from the Office of the Medical Examiner:

- 004: Biohazard Bag
- 004-001: Blood, femoral - gray top tube
- 004-002: Blood, femoral - gray top tube
- 004-003: Blood, femoral - gray top tube
- 004-004: Blood, femoral - gray top tube
- 004-005: Blood, femoral - red top tube
- 004-006: Vitreous - red top tube
- 004-007: Skeletal muscle - plastic tube

Blood, postmortem

Acid/Neutral Screen (GC/MS)
negative (004-001)

Alcohols/Acetone (GC)
negative (004-002)

Alkaline Quantitation (GC, GC/MS)
negative (004-001)

Opiate Narcotics (GC/MS)
0.107 mg/L morphine (004-002)

Vitreous

Alcohols/Acetone (GC)
negative (004-006)

Opiate Narcotics (GC/MS)
0.046 mg/L morphine (004-006)



Accredited by The National Association of Medical Examiners

IFS-11-10161

McCollum, Larry Gene



Page 5 of 6

FINDINGS:

1. Hyperthermia

- a. History that the decedent was in a hot environment without air conditioning, and was witnessed to collapse with seizure activity.
- b. History that the decedent presented to the Emergency Department unresponsive, with a body temperature of 109.4 degrees Fahrenheit.
- c. Hospital course complicated by
 - 1. hypoxic-ischemic encephalopathy
 - 2. disseminated intravascular coagulation
 - 3. shock
 - 4. multi-system organ failure
- d. Brain swelling
 - 1. transtentorial herniation
 - 2. cerebellar tonsillar herniation and acute necrosis
 - 3. hypoxic-ischemic encephalopathy

2. History of hypertension

- a. Cardiac hypertrophy (heart weight = 550 grams)
- b. History of treatment with hydrochlorthiazide

3. Morbid obesity (Body mass index = 49.5)

4. Contusions of scalp and face

5. Subgaleal hemorrhage

6. No significant injuries

CONCLUSIONS:

Based on the autopsy and the history available to me, it is my opinion that Larry Gene McCollum, a 58-year-old white male, died as the result of hyperthermia. The decedent was in a hot environment without air conditioning, and he may have been further predisposed to developing hyperthermia due to morbid obesity and treatment with a diuretic (hydrochlorthiazide) for hypertension.

MANNER OF DEATH: Accident



Accredited by The National Association of Medical Examiners

AFFIDAVIT

STATE OF TEXAS §
 §
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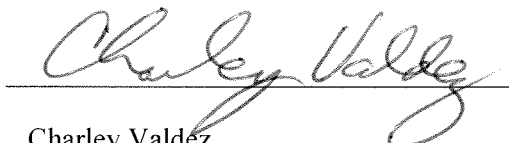
BEFORE ME, the undersigned authority personally appeared Charley Valdez, who, being by me duly sworn, deposes as follows:

“My name is Charley Valdez. I am over twenty-one years of age, of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated.

I am employed as a Program Supervisor III for Classification and Records for the Texas Department of Criminal Justice, and my office is located in Huntsville, Texas. I do hereby certify that the attached **five pages** of records on offender, **Larry Gene McCollum, TDCJ# 1105538 and TDCJ# 1721640**, are true and correct copies of the original records now on file within Classification and Records of the Texas Department of Criminal Justice.

These attached **five pages** of records are maintained in the usual and regular course of business in Classification and Records of the Texas Department of Criminal Justice, and that such records are maintained on each and every inmate confined here. All memoranda, reports, records or data compilations kept therein are made at or near the time by, or from information transmitted by, a person with knowledge of the events, acts, conditions, opinions or diagnoses described. These records are kept in the course of a regularly conducted business activity, and it is the regular practice of this institution to make such memoranda, reports, records or data compilations.

In witness whereof, I have hereto set my hand this 11th day of February, 2014.

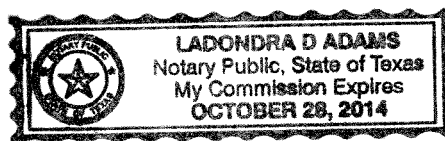


Charley Valdez
Program Supervisor III
Classification and Records

SUBSCRIBED AND SWORN TO before me, the said Notary Public on this the 11th day of February, 2014, to certify which witness my hand and seal of office.



Notary Public in and for
The State of Texas



Notary without Bond



Texas Department of Criminal Justice

Brad Livingston
Executive Director

February 11, 2014

Tricia Rowe
Accounting Services
Financial Operations
Room 224
P.O. Box 4015
Huntsville, Tx. 77342

RE: McCollum, Larry Gene TDCJ# 1105538 and TDCJ# 1721640

The files of this Agency have been reviewed on Offender Larry Gene McCollum, TDCJ# 1105538, TDCJ# 1721640, pursuant to the request of the Office of General Counsel.

State Jail TDCJ# 1105538

Offender McCollum was received into the TDCJ-Hutchins State Jail on 7-1-2002 from McLennan County, on a 20-month sentence. Offender McCollum was convicted by the 54th District Court for the following:

- Theft <1500>20K, under cause number 2000-207-C. Offender McCollum was convicted for an offense occurring on 10-18-1997, with sentencing on 6-13-2002, and sentence to begin on 5-18-2002.

Offender McCollum was released from TDCJ custody by discharge of sentence on 1-12-2004, without further obligation.

Offender McCollum spent 1-year, 7-months, and 24-days incarcerated in TDCJ under TDCJ# 1105538.

State Jail TDCJ# 1721640

Offender McCollum was received into TDCJ- Hutchins State Jail on 7-15-2011 from McLennan County, on a 1-year sentence. Offender McCollum was convicted by the 80th District Court for the following:

- Forgery, under cause number 2011-531-C2. Offender McCollum was convicted for an offense occurring on 1-23-2009, with sentencing on 6-23-2011, and sentence to begin on 6-21-2011.

Offender McCollum died on 7-28-2011, while at the TDCJ-Hutchins Unit.

Offender McCollum spent 1-month and 7-days incarcerated in TDCJ under TDCJ# 1721640.

Offender McCollum spent a combined total of 1-year, 9-months, and 1-day incarcerated in TDCJ, under TDCJ# 1105538 and TDCJ# 1721640. This time is inclusive of jail time credits regarding the cases indicated in TDCJ records.

The cause entitled Stephen McCollum, et al v. Brad Livingston, et al, under cause number #3:12-CV-2037 is not a case that Offender McCollum was serving in TDCJ custody.

Sincerely,

A handwritten signature in cursive script, appearing to read "Charley Valdez", is written over the word "Sincerely,".

Charley Valdez
Program Supervisor III
Offender Time Management
Classification and Records
cc: file

Appendix 418

ORAL DEPOSITION OF STEPHEN MICHAEL MCCOLLUM

<p style="text-align: right;">2</p> <p>1 APPEARANCES</p> <p>2</p> <p>3 FOR THE PLAINTIFFS:</p> <p>4 Mr. Scott Medlock</p> <p>5 Edwards Law</p> <p>6 1101 E. 11th Street</p> <p>7 Austin, Texas 78702</p> <p>8 Phone: 512-623-7727</p> <p>9</p> <p>10 FOR THE DEFENDANT UNIVERSITY OF TEXAS MEDICAL BRANCH:</p> <p>11 Ms. Kim Coogan</p> <p>12 Ms. Shanna Elizabeth Molinare</p> <p>13 Assistant Attorney General</p> <p>14 P.O. Box 12548</p> <p>15 Austin, Texas 78711-2548</p> <p>16 Phone: 512-463-2080</p> <p>17 FOR THE DEFENDANTS TEXAS DEPARTMENT OF CRIMINAL JUSTICE,</p> <p>18 ROBERT EASON AND JEFF PRINGLE:</p> <p>19</p> <p>20 Mr. Jonathan Stone</p> <p>21 Assistant Attorney General</p> <p>22 P.O. Box 12548</p> <p>23 Austin, Texas 78711-2548</p> <p>24 Phone: 512-463-2080</p> <p>25</p> <p>FOR THE DEFENDANTS BRAD LIVINGSTON, RICK THALER AND</p> <p>BILL STEPHENS:</p> <p>Mr. Kyle M. Smith</p> <p>Assistant Attorney General</p> <p>P.O. Box 12548</p> <p>Austin, Texas 78711-2548</p> <p>Phone: 512-463-2080</p> <p>ALSO PRESENT:</p> <p>Jennifer Osteen</p> <p>Stephanie Kingrey</p> <p>Sandra Sue McCollum</p> <p style="text-align: center;">*~*~*~*</p>	<p style="text-align: right;">4</p> <p>1 STEPHEN MICHAEL MCCOLLUM,</p> <p>2 having been first duly sworn, testified as follows:</p> <p>3 EXAMINATION</p> <p>4 BY MS. COOGAN:</p> <p>5 Q. Sir, would you please state your full name for</p> <p>6 the record.</p> <p>7 A. Yes. It's Stephen Michael McCollum, Stephen</p> <p>8 with a P-H, M-I-C-H-A-E-L, Stephen Michael.</p> <p>9 Q. Sorry. It took me a minute. I'm sorry.</p> <p>10 Can you tell us your birthday?</p> <p>11 A. It's</p> <p>12 Q. And your social security number?</p> <p>13 A.</p> <p>14 MR. MEDLOCK: And counsel, again, just to</p> <p>15 clarify, we'll redact that if it's ever filed with the</p> <p>16 court.</p> <p>17 MS. COOGAN: Definitely.</p> <p>18 Q. (BY MS. COOGAN) Can you tell me where your --</p> <p>19 you physically live?</p> <p>20 A. I live in Woodway Texas. It's inside of</p> <p>21 central Texas, right next to Waco.</p> <p>22 Q. And what's your home address?</p> <p>23 A.</p> <p>24 Q. How long have you lived there?</p> <p>25 A. Two years.</p>
<p style="text-align: right;">3</p> <p>1 INDEX</p> <p>2 Appearances..... 2</p> <p>3 STEPHEN MICHAEL MCCOLLUM</p> <p>4 Examination by Ms. Coogan..... 4</p> <p>5 Examination by Mr. Stone..... 41</p> <p>6 Examination by Mr. Smith..... 74</p> <p>7</p> <p>8 Reporter's Certificate..... 84</p> <p>9</p> <p>10 (No exhibits were marked during this deposition).</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">5</p> <p>1 Q. Do you have air-conditioning there?</p> <p>2 A. Yes, ma'am.</p> <p>3 Q. And where did you live before that?</p> <p>4 A. I lived on Speegleville Road in Speegleville,</p> <p>5 right outside of Waco.</p> <p>6 Q. And did you have air-conditioning at that home?</p> <p>7 A. Yes, ma'am.</p> <p>8 Q. Does anybody live with you there in Woodway?</p> <p>9 A. Yes. My wife and my daughter.</p> <p>10 Q. And what are their names?</p> <p>11 A. Wife's name is Ashley Satli-McCollum, S-A-T-L-I</p> <p>12 hyphen McCollum.</p> <p>13 Q. And what's your daughter's name?</p> <p>14 A. Hailey, H-A-I-L-E-Y, McCollum.</p> <p>15 Q. And how old is Hailey?</p> <p>16 A. She's ten.</p> <p>17 Q. Okay. Can you tell us how far you went in</p> <p>18 school?</p> <p>19 A. I graduated high school. After that, just</p> <p>20 at -- I went straight into working and just did</p> <p>21 certifications for different areas of work that I've had</p> <p>22 over the years.</p> <p>23 Q. Can you give me some examples?</p> <p>24 A. Certified process server, certified legal</p> <p>25 videographer, and I've taken a lot of graphic design</p>

ORAL DEPOSITION OF STEPHEN MICHAEL MCCOLLUM

<p style="text-align: right;">6</p> <p>1 courses as well.</p> <p>2 Q. And I -- I thought you -- I heard you say</p> <p>3 earlier that your family owns or operates a</p> <p>4 litigation-type business, services.</p> <p>5 A. Yeah. It's Central Texas Litigation in Waco.</p> <p>6 They do process service, and we have meeting rooms for</p> <p>7 mediations and depositions, video-conferencing, virtual</p> <p>8 offices, things like that.</p> <p>9 Q. And who is in that business with you?</p> <p>10 A. I'm -- I'm no longer with that company. My</p> <p>11 aunt, Kathy Burrow, owns it, and my mother worked for</p> <p>12 there -- worked there several years as a -- kind of like</p> <p>13 a legal aide doing -- helping out attorneys and things</p> <p>14 like that, doing scan jobs and things like that.</p> <p>15 Q. And this is the lady that had worked at Naman</p> <p>16 Howell?</p> <p>17 A. Yes. And I think now she's working for Haley &</p> <p>18 Olson.</p> <p>19 Q. And, then, is that her sister or your dad's</p> <p>20 sister?</p> <p>21 A. It's her sister.</p> <p>22 Q. Have you ever been married to anyone else?</p> <p>23 A. Yes, I was. First marriage was in 2002 and</p> <p>24 lasted three years. That's the mother of my child.</p> <p>25 Q. And what was that lady's name?</p>	<p style="text-align: right;">8</p> <p>1 Bonham, that's whenever, to my understanding, he was</p> <p>2 told that he had diabetes, because of his blood sugar</p> <p>3 and his heart -- blood pressure.</p> <p>4 Q. And that was by somebody at the prison the</p> <p>5 first time he went when he went to the Bonham unit or</p> <p>6 the --</p> <p>7 A. Yes, ma'am.</p> <p>8 Q. -- unit that's in Bonham?</p> <p>9 A. Yes, ma'am.</p> <p>10 Q. Okay.</p> <p>11 A. And that was mainly just, you know, hearing</p> <p>12 what he said they made him take while he was in prison.</p> <p>13 Q. And what did you hear him say they made him</p> <p>14 take?</p> <p>15 A. Diabetic medication, not -- not insulin. I do</p> <p>16 not know the name of the medication, though.</p> <p>17 Q. Okay. And did your dad tell you that, or did</p> <p>18 your sister tell you that?</p> <p>19 A. It's just a combination of things I've heard</p> <p>20 over the years. You know, his brother Terry and I went</p> <p>21 and picked him up from that prison and so, you know, his</p> <p>22 brother knew a lot more about his condition because he</p> <p>23 lived with his brother for a while, and I just remember</p> <p>24 hearing that over the years. I couldn't tell you</p> <p>25 exactly when.</p>
<p style="text-align: right;">7</p> <p>1 A. Her name was Nicole, NICOLE, maiden name</p> <p>2 Jorgenson, and now it's -- she's remarried.</p> <p>3 Q. And were you ever married to anybody else?</p> <p>4 A. No. Just that and my current wife.</p> <p>5 Q. Okay. I want to ask you some questions</p> <p>6 primarily about your father.</p> <p>7 A. Yes, ma'am.</p> <p>8 Q. Many of them are going to be the same.</p> <p>9 A. I understand.</p> <p>10 Q. Do you know whether your father was ever</p> <p>11 diagnosed with diabetes?</p> <p>12 A. I do not. I only know what he told my sister</p> <p>13 as -- as far as like them saying that he had diabetes</p> <p>14 while he was in -- in jail because of his blood sugar</p> <p>15 and things like that and them putting him on medicine</p> <p>16 for diabetes while in jail.</p> <p>17 Q. Okay. So you -- you just told me a lot of</p> <p>18 stuff in that one little sentence.</p> <p>19 A. Okay. Sorry.</p> <p>20 Q. That's okay. Did -- is it -- okay.</p> <p>21 What is your understanding of who told</p> <p>22 your dad that he had diabetes?</p> <p>23 A. I'm --</p> <p>24 Q. Or tell me that again.</p> <p>25 A. Okay. I would say whenever he went to jail in</p>	<p style="text-align: right;">9</p> <p>1 Q. Did you ever see your dad take any medication</p> <p>2 that you understood was for diabetes?</p> <p>3 A. I have not, and as -- to my understanding, he</p> <p>4 did not take any outside of prison.</p> <p>5 Q. Okay. I was just about to ask you that.</p> <p>6 A. Uh-huh.</p> <p>7 Q. Do you have an understanding as to why?</p> <p>8 A. I -- I really do not. I -- you know, he maybe</p> <p>9 didn't go to the doctor enough. He might be kind of</p> <p>10 like myself. You know, if I'm not sick, I don't go to</p> <p>11 the doctor and, if I don't hurt, I just stay away, but</p> <p>12 I -- I -- that's what I would pretty much say as far as</p> <p>13 that. He -- I know he didn't like doctors. He would</p> <p>14 take aspirin if he had a headache or if he hurt. That's</p> <p>15 about it.</p> <p>16 Q. Okay. Did you ever see him appear to be ill</p> <p>17 and hear your Uncle Terry or somebody else say, He's</p> <p>18 having a diabetes problem right now?</p> <p>19 A. No, I've never seen that.</p> <p>20 Q. What about when he went into jail the second</p> <p>21 time? Did you ever learn anything about whether he was</p> <p>22 treated for diabetes either at the McLennan County Jail</p> <p>23 or at the Texas prison?</p> <p>24 A. I did ask, because my uncle on my mother's side</p> <p>25 works at the jail in McLennan County. I asked if he</p>

ORAL DEPOSITION OF STEPHEN MICHAEL MCCOLLUM

<p style="text-align: right;">10</p> <p>1 knew anything about the records as far as how he was</p> <p>2 doing, you know, did he have diabetes, things like that,</p> <p>3 but I -- I never got a straight answer and I did not see</p> <p>4 the medical reports, so I do not know.</p> <p>5 Q. What's your uncle's name?</p> <p>6 A. Randy Donaldson. He was just a jailer.</p> <p>7 Q. Okay. Do you remember whether he was going to</p> <p>8 make -- keep a special eye on your dad or anything?</p> <p>9 A. He -- he probably would, but he was just intake</p> <p>10 so he -- he never went beyond that.</p> <p>11 Q. Didn't have a lot of power at the jail or</p> <p>12 anything?</p> <p>13 A. Yes, ma'am, yes, ma'am.</p> <p>14 Q. Okay. What about for hypertension or high</p> <p>15 blood pressure? Did you ever know whether your dad had</p> <p>16 been diagnosed with that?</p> <p>17 A. I did not, no.</p> <p>18 Q. Did you ever hear either your Uncle Terry or</p> <p>19 your mom say, you know, Watch his salt, he's got that</p> <p>20 high blood pressure, anything like that?</p> <p>21 A. I've never heard that. I mean I -- my personal</p> <p>22 knowledge is that several people on that side of the</p> <p>23 family do deal with that, but I -- I've never heard it</p> <p>24 specifically told about my father until after, you know,</p> <p>25 we heard everything during this trial or --</p>	<p style="text-align: right;">12</p> <p>1 A. I think I did it ever since I was a little</p> <p>2 baby. I always got used to spending those weekends with</p> <p>3 my father and having two Christmases.</p> <p>4 Q. Okay. When -- when is the -- do you ever</p> <p>5 remember Christmas when you didn't spend it with your</p> <p>6 dad?</p> <p>7 A. It would probably be, you know, later</p> <p>8 teen-aged years after, you know, I was in high school</p> <p>9 and my --</p> <p>10 Q. That it -- that it stopped?</p> <p>11 A. Yeah, much like my sister, but it was further</p> <p>12 on, you know. Once she stopped going but I continued</p> <p>13 because I was still younger so, you know, I had more</p> <p>14 bonding time with my father.</p> <p>15 Q. Well, maybe I misunderstood. I thought she had</p> <p>16 said -- and I -- tell me if I'm wrong -- that there</p> <p>17 were years when y'all didn't see him at Christmastime.</p> <p>18 A. Not during the time that we were still going</p> <p>19 regularly, we -- we pretty much saw them every</p> <p>20 Christmas.</p> <p>21 Q. Okay.</p> <p>22 A. Other holidays maybe not so much, like</p> <p>23 Thanksgiving and things like that, because our mother's</p> <p>24 side of the family has a large family and it's -- they</p> <p>25 take up a lot of our time.</p>
<p style="text-align: right;">11</p> <p>1 Q. Okay. After he passed away.</p> <p>2 A. Yes, ma'am. Yes, ma'am.</p> <p>3 Q. Okay. What about any other medical conditions,</p> <p>4 you know -- I don't know, migraine headaches, asthma?</p> <p>5 Did you ever hear about him having anything -- anything?</p> <p>6 A. No, nothing more than sore knees, but that's</p> <p>7 just because he had -- he was overweight.</p> <p>8 Q. And one more time. Did you ever see medical or</p> <p>9 prescription bottles by his nightstand or anything like</p> <p>10 that?</p> <p>11 A. No, ma'am. I -- I never saw him take anything</p> <p>12 other than aspirin.</p> <p>13 Q. How often -- how old were you when your parents</p> <p>14 got divorced?</p> <p>15 A. One.</p> <p>16 Q. Okay.</p> <p>17 A. My sister is five years older than me so --</p> <p>18 Q. Would -- would you go and visit your dad at</p> <p>19 your grandparents house, then?</p> <p>20 A. Yes. I would -- I would go there every other</p> <p>21 weekend, and I did so until high school. I mean I</p> <p>22 always enjoyed my time with my father.</p> <p>23 Q. Was there ever a time when you -- when that</p> <p>24 started -- that you remember that started, or you think</p> <p>25 you did that ever since you were a little baby?</p>	<p style="text-align: right;">13</p> <p>1 Q. Okay. And then what about on your birthday?</p> <p>2 Would you see your dad on your birthday every year,</p> <p>3 every other year, never?</p> <p>4 A. Probably every year until I was 12.</p> <p>5 Q. Would you get a present from him?</p> <p>6 A. Yes.</p> <p>7 Q. How old were you, do you think, when -- the</p> <p>8 first time he went to prison?</p> <p>9 A. Let's see. I was early 20's.</p> <p>10 Q. Okay. During the time before your dad went to</p> <p>11 prison the first time, do you remember ever seeing him</p> <p>12 be abusive towards your mom?</p> <p>13 A. The only time I ever saw that is there was a --</p> <p>14 a time whenever my father tried to be back with my</p> <p>15 mother whenever I was a little bit older, when they</p> <p>16 divorced, and, you know, I was present for maybe one</p> <p>17 time that there was physical abuse and, you know, my</p> <p>18 sister took me out of the house and we went to my</p> <p>19 grandparents.</p> <p>20 Q. And did you see him strike her?</p> <p>21 A. Yes, ma'am.</p> <p>22 Q. Did she have to go to the hospital?</p> <p>23 A. No, ma'am. He ran off, because he knew my</p> <p>24 grandpa would probably hurt him.</p> <p>25 Q. Your grandpa on his side or --</p>

ORAL DEPOSITION OF STEPHEN MICHAEL MCCOLLUM

<div style="text-align: right; font-weight: bold;">82</div> <p>1 A. No.</p> <p>2 Q. Was there anything that he did to contribute to</p> <p>3 your father's death?</p> <p>4 A. No.</p> <p>5 MR. SMITH: I'll pass the witness.</p> <p>6 MR. MEDLOCK: I'll pass the witness.</p> <p>7 MS. COOGAN: Nothing from me.</p> <p>8 MR. MEDLOCK: We'll reserve.</p> <p>9 MR. STONE: We'll reserve.</p> <p>10 (End of deposition).</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<div style="text-align: right; font-weight: bold;">84</div> <p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE NORTHERN DISTRICT OF TEXAS</p> <p>3 DALLAS DIVISION</p> <p>4 STEPHEN MCCOLLUM, et al,)</p> <p>5 Plaintiffs,)</p> <p>6 V.) C.A. No. 3:12-CV-02037</p> <p>7))</p> <p>8))</p> <p>9 BRAD LIVINGSTON, et al,)</p> <p>10 Defendants.)</p> <p>11</p> <p>12 REPORTER'S CERTIFICATION</p> <p>13 ORAL DEPOSITION OF</p> <p>14 STEPHEN MICHAEL MCCOLLUM</p> <p>15 November 22, 2013</p> <p>16</p> <p>17 I, Debra L. McGrew, Certified Shorthand</p> <p>18 Reporter in and for the State of Texas, hereby certify</p> <p>19 to the following:</p> <p>20 That the witness, STEPHEN MICHAEL MCCOLLUM, was</p> <p>21 duly sworn by the officer and that the transcript of the</p> <p>22 oral deposition is a true record of the testimony given</p> <p>23 by the witness;</p> <p>24 I further certify that pursuant to FRCP Rule</p> <p>25 30(f)(1) that the signature of the deponent:</p> <p> _____ was requested by the deponent or a party</p> <p> before the completion of the deposition and returned</p> <p> within 30 days from date of receipt of the transcript.</p> <p> If returned, the attached Changes and Signature page</p> <p> contains any changes and the reasons therefor;</p>
<div style="text-align: right; font-weight: bold;">83</div> <p>1 CHANGES AND SIGNATURE</p> <p>2 WITNESS NAME: STEPHEN MICHAEL MCCOLLUM DATE: 11-22-13</p> <p>3 PAGE LINE CHANGE REASON</p> <p>4 _____</p> <p>5 _____</p> <p>6 _____</p> <p>7 _____</p> <p>8 _____</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 _____</p> <p>20 I, STEPHEN MICHAEL MCCOLLUM, have read the foregoing</p> <p>21 deposition and hereby affix my signature that same is</p> <p>22 true and correct, except as noted herein.</p> <p>23</p> <p>24 _____</p> <p>25 STEPHEN MICHAEL MCCOLLUM</p> <p> Job No. 113925</p>	<div style="text-align: right; font-weight: bold;">85</div> <p>1 <u> X </u> was not requested by the deponent or a</p> <p>2 party before the completion of the deposition.</p> <p>3 I further certify that I am neither attorney</p> <p>4 nor counsel for, related to, nor employed by any of the</p> <p>5 parties to the action in which this testimony was taken.</p> <p>6 Further, I am not a relative or employee of any attorney</p> <p>7 of record in this case, nor am I financially or</p> <p>8 otherwise interested in the outcome of the action.</p> <p>9 Subscribed and sworn to on this the 9th day of</p> <p>10 December, 2013.</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15 Debra L. McGrew, Texas CSR #1573</p> <p>16 Expiration Date: 12/31/2014</p> <p>17 Sunbelt Reporting & Litigation Services</p> <p>18 Firm Registration No. 87</p> <p>19 1016 La Posada Drive, Suite 294</p> <p>20 Austin, Texas 78752</p> <p>21 512-465-9100</p> <p>22</p> <p>23 Job No. 113925</p> <p>24</p> <p>25</p>

22 (Pages 82 to 85)

STEPHEN MCCOLLUM, et al,)
Plaintiffs,)
)
V.) C.A. No. 3:12-CV-02037
)
)
BRAD LIVINGSTON, et al,)
Defendants.)

ORAL DEPOSITION OF
SANDRA SUE MCCOLLUM
November 22, 2013

ORAL DEPOSITION OF SANDRA SUE MCCOLLUM, produced as a witness at the instance of the Defendant University of Texas Medical Branch and duly sworn, was taken in the above-styled and numbered cause on the 22nd of November, 2013, from 10:35 a.m. to 11:58 a.m., before DEBRA L. MCGREW, CSR in and for the State of Texas, reported by machine shorthand at the offices of Edwards Law, 1101 E. 11th Street, Austin, Texas, pursuant to the Federal Rules of Civil Procedure.

ORAL DEPOSITION OF SANDRA SUE MCCOLLUM

<p style="text-align: right;">2</p> <p>1 APPEARANCES</p> <p>2</p> <p>3 FOR THE PLAINTIFFS:</p> <p>4 Mr. Scott Medlock</p> <p>5 Edwards Law</p> <p>6 1101 E. 11th Street</p> <p>7 Austin, Texas 78702</p> <p>8 Phone: 512-623-7727</p> <p>9</p> <p>10 FOR THE DEFENDANT UNIVERSITY OF TEXAS MEDICAL BRANCH:</p> <p>11 Ms. Kim Coogan</p> <p>12 Ms. Shanna Elizabeth Molinare</p> <p>13 Assistant Attorney General</p> <p>14 P.O. Box 12548</p> <p>15 Austin, Texas 78711-2548</p> <p>16 Phone: 512-463-2080</p> <p>17 FOR THE DEFENDANTS TEXAS DEPARTMENT OF CRIMINAL JUSTICE,</p> <p>18 ROBERT EASON AND JEFF PRINGLE:</p> <p>19</p> <p>20 Mr. Jonathan Stone</p> <p>21 Assistant Attorney General</p> <p>22 P.O. Box 12548</p> <p>23 Austin, Texas 78711-2548</p> <p>24 Phone: 512-463-2080</p> <p>25</p> <p>FOR THE DEFENDANTS BRAD LIVINGSTON, RICK THALER AND</p> <p>BILL STEPHENS:</p> <p>Mr. Kyle M. Smith</p> <p>Assistant Attorney General</p> <p>P.O. Box 12548</p> <p>Austin, Texas 78711-2548</p> <p>Phone: 512-463-2080</p> <p>ALSO PRESENT:</p> <p>Jennifer Osteen</p> <p>Stephanie Kingrey</p> <p>Stephen Michael McCollum</p> <p style="text-align: center;">*~*~*~*</p>	<p style="text-align: right;">4</p> <p>1 SANDRA SUE MCCOLLUM,</p> <p>2 having been first duly sworn, testified as follows:</p> <p>3 EXAMINATION</p> <p>4 BY MS. COOGAN:</p> <p>5 Q. Ms. McCollum, my name is Kim Coogan, and I</p> <p>6 represent UTMB. We are here today to ask you some</p> <p>7 questions because of the lawsuit that you have filed.</p> <p>8 Do you understand that?</p> <p>9 A. Yes, ma'am.</p> <p>10 Q. It's possible that today may be very unpleasant</p> <p>11 for you, just because of the memories that it brings</p> <p>12 back and, if you need to take a break because of that,</p> <p>13 please feel free to do that. I am not here to make you</p> <p>14 feel bad. I'm just here to ask you some questions</p> <p>15 because that's my job because of the lawsuit. Okay?</p> <p>16 I need you to answer yes or no or -- or</p> <p>17 whatever the answer is.</p> <p>18 A. Yes.</p> <p>19 Q. If I put my hand by my ear, that means I can't</p> <p>20 here you.</p> <p>21 A. Okay.</p> <p>22 MR. MEDLOCK: And, Sandra, you might want</p> <p>23 to speak up a little bit, too, just so the court</p> <p>24 reporter can hear your answer --</p> <p>25 THE WITNESS: Yes.</p>
<p style="text-align: right;">3</p> <p>1 INDEX</p> <p>2 Appearances..... 2</p> <p>3 SANDRA SUE MCCOLLUM</p> <p>4 Examination by Ms. Coogan..... 4</p> <p>5 Examination by Mr. Stone..... 39</p> <p>6 Examination by Mr. Smith..... 50</p> <p>7 Examination by Ms. Coogan..... 53</p> <p>8 Reporter's Certificate..... 55</p> <p>9</p> <p>10 (No exhibits were marked during this deposition).</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">5</p> <p>1 MR. MEDLOCK: -- and make sure she gets it</p> <p>2 down.</p> <p>3 Q. (BY MS. COOGAN) If I ask you a question that</p> <p>4 you don't understand, please just tell me, and I'll</p> <p>5 rephrase it. Okay?</p> <p>6 A. Yes.</p> <p>7 Q. If you want to take a break to go to the</p> <p>8 bathroom or make a phone call or smoke or talk to your</p> <p>9 lawyer, you are absolutely allowed to do that and all</p> <p>10 you have to do is tell me.</p> <p>11 A. Yes, ma'am.</p> <p>12 Q. I drink a lot of coffee and water and so</p> <p>13 sometimes I like to take a lot of breaks myself, so</p> <p>14 don't feel guilty if you want to do that. Okay?</p> <p>15 A. Okay.</p> <p>16 Q. Can you please state your full name?</p> <p>17 A. Sandra Sue McCollum.</p> <p>18 Q. And what was your maiden name?</p> <p>19 A. My maiden name was Lawson.</p> <p>20 Q. L-A-W-S-O-N?</p> <p>21 A. Yes, ma'am.</p> <p>22 Q. Have you ever gone by any other names?</p> <p>23 A. Yes, ma'am.</p> <p>24 Q. What other --</p> <p>25 A. I was married twice previous to Dalton Kidd and</p>

ORAL DEPOSITION OF SANDRA SUE MCCOLLUM

<p style="text-align: right;">18</p> <p>1 A. When we had gone for his hearing and he was -- 2 we was there, and he was -- they took him to the jail in 3 Waco and said he would be transferred there, to the 4 Hutchinson prison there. 5 Q. Okay. And then he was there for about a month 6 or so -- 7 A. Yes, ma'am. 8 Q. -- you think? 9 And then did you go visit him one day and 10 he said, Hey, they're shipping me out later, or how did 11 that work? 12 A. Yes, ma'am. He said he would write me a letter 13 the day before or so when he found out he was going to 14 be sent off to let me know that he was going to be 15 transferred off. 16 Q. And did he do that? 17 A. Yes, ma'am, he did. 18 Q. Do you happen -- do you have anything in 19 response to the subpoena, by the way? 20 MR. MEDLOCK: We have these documents, 21 Ms. Coogan. There are some additional documents that my 22 assistant is making a copy of. I can go get those if 23 you'd like. It's mostly photographs that she was 24 copying when we -- 25 Q. (BY MS. COOGAN) Okay. Did you -- one of the</p>	<p style="text-align: right;">20</p> <p>1 any medical problems? 2 A. Ma'am, all that I know of -- he -- he didn't 3 take no medication or nothing while we were together. 4 He did not go see a doctor while we were together. Only 5 thing he took was maybe Tylenol if he had a headache or 6 something. That's the only medication I knew of. 7 Q. Did he ever mention whether he had ever been 8 diabetic in the past? 9 A. Not in the past, but while he was in the -- the 10 jail there in Waco, he had told me that they had done 11 some blood work and it showed his blood sugar was up and 12 they were going to give him medication for it. 13 Q. For diabetes? 14 A. For diabetes, yes, ma'am. 15 Q. But during the time that you were married, you 16 don't recall him ever being diagnosed with diabetes? 17 A. No medication that I knew of. 18 Q. And he didn't take any shots of insulin or -- 19 A. No, ma'am. 20 Q. Okay. What about high blood pressure? When 21 y'all were living together, did he ever take any high 22 blood pressure medicine? 23 A. No, ma'am. 24 Q. And when he was at the McLennan County Jail, do 25 you remember if he told you about any --</p>
<p style="text-align: right;">19</p> <p>1 things I wanted to ask you about is whether you had any 2 of the letters or cards or anything that you and he may 3 have exchanged. 4 A. Yes, ma'am. I don't have them with me, I 5 didn't know to bring them, but I do have my -- save my 6 letters. 7 Q. Okay. Let me just ask you what this -- what 8 this is. 9 A. I had come home from work that morning. 10 Q. Uh-huh. 11 A. I work night shifts and, when I got home, I had 12 gotten a call from the warden stating my husband had 13 been transferred to the hospital, he was critically ill, 14 that none of us could really go see him right now until 15 they found out how critical he was and for me to hold 16 on, they would get back in touch with me to let me know 17 if any of us could go down there to see him. 18 Q. And what is this -- it's -- your lawyer gave it 19 to me in response to my subpoena. It says -- looks like 20 a notebook, copies of a -- from a notebook, maybe, with 21 some handwritten notes. 22 A. I did not do this, ma'am. 23 Q. Okay. Do you know who did? 24 A. His daughter. 25 Q. While you were married, did your husband have</p>	<p style="text-align: right;">21</p> <p>1 A. Blood pressure? They checked his blood 2 pressure. It was up. They didn't know whether it was 3 because he just got put in jail or why it was raised, 4 but they did give him medication for blood pressure. 5 Q. Do you know what they gave him? 6 A. I'm not for sure of the type of medicine they 7 gave him, no, ma'am. 8 Q. Okay. Do you know how often he took it? 9 A. I don't know how often, but he was taking it 10 every day. They were giving it to him every day while 11 he was there. 12 Q. Okay. And -- and do you know while he was in 13 McLennan County Jail what -- what medicine, if any, that 14 he got for diabetes? 15 A. I'm not for sure the type of medicine, ma'am. 16 Q. Okay. Do you know if he was even getting any? 17 Sometimes -- 18 A. He told me hisself that they were giving him 19 the medication for the diabetes and for the high blood 20 pressure. They had started him on it. 21 Q. Okay. Did he say anything about whether he was 22 feeling better because of that? 23 A. No, ma'am, he didn't say. 24 Q. Were there any other conditions that he told 25 you they had found while he was in the McLennan County</p>

ORAL DEPOSITION OF SANDRA SUE MCCOLLUM

54	56
<p>1 CHANGES AND SIGNATURE</p> <p>2 WITNESS NAME: SANDRA SUE MCCOLLUM DATE: 11-22-13</p> <p>3 PAGE LINE CHANGE REASON</p> <p>4 _____</p> <p>5 _____</p> <p>6 _____</p> <p>7 _____</p> <p>8 _____</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 _____</p> <p>20 I, SANDRA SUE MCCOLLUM, have read the foregoing</p> <p>21 deposition and hereby affix my signature that same is</p> <p>22 true and correct, except as noted herein.</p> <p>23 _____</p> <p>24 SANDRA SUE MCCOLLUM</p> <p>25 Job No. 113925</p>	<p>1 <u> X </u> was not requested by the deponent or a</p> <p>2 party before the completion of the deposition.</p> <p>3 I further certify that I am neither attorney</p> <p>4 nor counsel for, related to, nor employed by any of the</p> <p>5 parties to the action in which this testimony was taken.</p> <p>6 Further, I am not a relative or employee of any attorney</p> <p>7 of record in this case, nor am I financially or</p> <p>8 otherwise interested in the outcome of the action.</p> <p>9 Subscribed and sworn to on this the 9th day of</p> <p>10 December, 2013.</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15 _____</p> <p>16 Debra L. McGrew, Texas CSR #1573</p> <p>17 Expiration Date: 12/31/2014</p> <p>18 Sunbelt Reporting & Litigation Services</p> <p>19 Firm Registration No. 87</p> <p>20 1016 La Posada Drive, Suite 294</p> <p>21 Austin, Texas 78752</p> <p>22 512-465-9100</p> <p>23</p> <p>24 Job No. 113925</p> <p>25</p>
<p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE NORTHERN DISTRICT OF TEXAS</p> <p>3 DALLAS DIVISION</p> <p>4 STEPHEN MCCOLLUM, et al,)</p> <p>5 Plaintiffs,)</p> <p>6)</p> <p>7 V.) C.A. No. 3:12-CV-02037</p> <p>8)</p> <p>9)</p> <p>10 BRAD LIVINGSTON, et al,)</p> <p>11 Defendants.)</p> <p>12</p> <p>13</p> <p>14</p> <p>15 REPORTER'S CERTIFICATION</p> <p>16 ORAL DEPOSITION OF</p> <p>17 SANDRA SUE MCCOLLUM</p> <p>18 November 22, 2013</p> <p>19</p> <p>20 I, Debra L. McGrew, Certified Shorthand</p> <p>21 Reporter in and for the State of Texas, hereby certify</p> <p>22 to the following:</p> <p>23 That the witness, SANDRA SUE MCCOLLUM, was duly</p> <p>24 sworn by the officer and that the transcript of the oral</p> <p>25 deposition is a true record of the testimony given by</p> <p>the witness;</p> <p>I further certify that pursuant to FRCP Rule</p> <p>30(f)(1) that the signature of the deponent:</p> <p><u> </u> was requested by the deponent or a party</p> <p>before the completion of the deposition and returned</p> <p>within 30 days from date of receipt of the transcript.</p> <p>If returned, the attached Changes and Signature page</p> <p>contains any changes and the reasons therefor;</p>	<p>15 (Pages 54 to 56)</p>

15 (Pages 54 to 56)

CORRECTIONAL MANAGED HEALTH CARE POLICY MANUAL	Effective Date: 11/1/2011	NUMBER: G-52.1 Page 1 of 1
	Replaces: 10/95	
	Formulated: 7/85 Reviewed: 07/13	
INFIRMARY CARE		

PURPOSE: To outline the scope of infirmary care for offenders of the Texas Department of Criminal Justice.

POLICY:

- I. Infirmary care within the Texas Department of Criminal Justice is provided at designated sites. Each facility maintains written or electronic documentation of the scope of medical and nursing care provided at the infirmary.
- II. Infirmary beds are utilized for offenders who need inpatient care for an illness, injury or diagnosis that requires observation and/or medical management but does not require admission to an acute care hospital.
- III. Admission to and discharge from said facilities are by physician or mid-level practitioner only. All inpatient admission and discharge orders must be co-signed by a physician.
- IV. Each infirmary meets the following criteria:
 - A. a physician or mid-level practitioner is available on a 24 hour basis. Mid-level practitioner practices and procedures are consistent with approved clinical protocols
 - B. nursing services are under the direction of a full-time registered nurse who is on-site daily
 - C. qualified health care personnel are on duty 24 hours per day
 - D. specific nursing care procedures are dictated by a manual of nursing care that is current
 - E. offenders are within sight or sound of a qualified health care provider at all times
- V. A separate inpatient record is maintained on all individuals admitted to the infirmaries.
- VI. Admission to and discharge from infirmary health care is coordinated through the Utilization Review/Utilization Management Department.
- VII. The required frequency of evaluations/assessments and documentation will be included in the facility process manual/addendum.

Index: Inpatient care

Reference: NCCHC Standard P-52, Infirmary Care (essential)
ACA Standard 4-4352 (Ref. 3-4354)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

STEPHEN McCOLLUM,
STEPHANIE KINGREY, and
SANDRA McCOLLUM,
individually and as
heirs at law to the
Estate of LARRY GENE
McCOLLUM,
Plaintiffs,

VS Â§ CIVIL ACTION NO.
Â§ 3:12-cv-02037

BRAD LIVINGSTON, JEFF
PRINGLE, and the TEXAS
DEPARTMENT OF CRIMINAL
JUSTICE,
Defendants.

ORAL AND VIDEOTAPED DEPOSITION OF

RICHARD J. CLARK

FEBRUARY 7, 2013

ORAL AND VIDEOTAPED DEPOSITION OF

RICHARD J. CLARK, produced as a witness at the instance of the PLAINTIFFS, and duly sworn, was taken in the above-styled and numbered cause on the 7th day of February, 2013, from 1:55 p.m. to 3:50 p.m., before TINA TERRELL BURNEY, CSR in and for the State of Texas, reported by machine shorthand, at the Hutchins State Jail, 1500 E. Langdon Road, Dallas, Texas 75241, pursuant to the Federal Rules of Civil Procedure.

<p style="text-align: right;">2</p> <p>1 APPEARANCES</p> <p>2 FOR THE PLAINTIFFS:</p> <p>3 Mr. Scott Medlock</p> <p>4 Mr. Jeff Edwards</p> <p>5 THE EDWARDS LAW FIRM</p> <p>6 The Bremond Houston House</p> <p>7 706 Guadalupe</p> <p>8 Austin, Texas 78701</p> <p>9 jeff@edwards-law.com</p> <p>10 scott@edwards-law.com</p> <p>11</p> <p>12 FOR THE DEFENDANTS:</p> <p>13 Mr. Bruce R. Garcia</p> <p>14 Mr. David A. Harris</p> <p>15 OFFICE OF THE ATTORNEY GENERAL</p> <p>16 P.O. Box 12548</p> <p>17 Austin, Texas 78711-2548</p> <p>18 512.463.2080 Fax 512.495.9139</p> <p>19 bruce.garcia@oag.state.tx.us</p> <p>20 david.harris@oag.state.tx.us</p> <p>21</p> <p>22 ALSO PRESENT:</p> <p>23 Mr. Jeremy Gilliam (Videographer)</p> <p>24 512.565.4799</p> <p>25 Warden Pringle</p>	<p style="text-align: right;">4</p> <p>1 PROCEEDINGS</p> <p>2 THE VIDEOGRAPHER: We are going on</p> <p>3 record. The time is 1:55 p.m. Will the reporter please</p> <p>4 swear in the witness?</p> <p>5 RICHARD J. CLARK,</p> <p>6 having been first duly sworn, testified as follows:</p> <p>7 BY MR. MEDLOCK:</p> <p>8 Q. Good afternoon, Mr. Clark. Could you please</p> <p>9 state your full name for the record?</p> <p>10 A. Richard J. Clark.</p> <p>11 Q. Mr. Clark, my name is Scott Medlock. Do you</p> <p>12 understand that I'm an attorney and that I represent the</p> <p>13 family of Larry Gene McCollum in this case?</p> <p>14 A. Yes.</p> <p>15 Q. And you understand that a suit has been</p> <p>16 brought against TDJC and various officials in the State</p> <p>17 of Texas about Mr. McCollum's death?</p> <p>18 A. Yes.</p> <p>19 Q. Have you ever been deposed or testified</p> <p>20 before, Mr. Clark?</p> <p>21 A. No.</p> <p>22 Q. Okay. I'm going to go over some kind of</p> <p>23 ground rules. If you don't hear my question, will you</p> <p>24 say so?</p> <p>25 A. (Nods head.)</p>
<p style="text-align: right;">3</p> <p>1 INDEX</p> <p>2 PAGE</p> <p>3 Appearances..... 2</p> <p>4 WITNESS: RICHARD J. CLARK</p> <p>5 Examination by Mr. Medlock..... 4</p> <p>6 Signature and Changes..... 79</p> <p>7 Reporter's Certificate..... 81</p> <p>8</p> <p>9</p> <p>10 EXHIBITS</p> <p>11 NO. DESCRIPTION PAGE</p> <p>12 11 Training Circular on Heat..... 16</p> <p>13 12 Sergeant Tate's Statement 7/22/11..... 34</p> <p>14 13 Lieutenant Sanders' Statement 7/22/11..... 34</p> <p>15 14 Mr. Clark's Statement 7/22/11..... 34</p> <p>16 15 Anonymous Letter Written to Mr. Edwards... 77</p> <p>17 16 Mr. Clark's Diagram of Dorms..... 78</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">5</p> <p>1 Q. And you just nodded yes there.</p> <p>2 A. Yes.</p> <p>3 Q. Even though we're putting this on videotape,</p> <p>4 if you can make sure --</p> <p>5 A. Yes.</p> <p>6 Q. -- to speak your answers audibly so that the</p> <p>7 court reporter can take them down, and, again, for the</p> <p>8 sake of the court reporter, make sure that I've</p> <p>9 completed asking my question before you answer, and I'll</p> <p>10 try to let you complete your answer before I ask another</p> <p>11 question, again, just so the court reporter has an</p> <p>12 easier time.</p> <p>13 A. Yes.</p> <p>14 Q. Does that make sense?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Now, if you don't know the answer to a</p> <p>17 question that I ask, will you tell me so?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And if you need to change an answer or</p> <p>20 add anything to an answer, will you say so?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And you understand that everything</p> <p>23 being said in this room this afternoon is being taken</p> <p>24 down by the court reporter and being recorded on the</p> <p>25 video?</p>

<p style="text-align: right;">22</p> <p>1 MR. MEDLOCK: No.</p> <p>2 Q. Mr. Clark, the document I just had you look at</p> <p>3 is a list of temperatures with heat index values; is</p> <p>4 that right?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And you've never seen -- it's never</p> <p>7 been one of the duties you've had at TDCJ --</p> <p>8 A. No.</p> <p>9 Q. -- to put together a document like this?</p> <p>10 Okay. Do you know whose job it is to put together that</p> <p>11 document?</p> <p>12 A. No, I don't.</p> <p>13 Q. Okay. Mr. Clark, some of the -- some of the</p> <p>14 time you're here working at TDCJ, it's your job to</p> <p>15 supervise the prisoners in the dorms; is that right?</p> <p>16 A. Yes.</p> <p>17 Q. When you're doing that, were you ever given a</p> <p>18 list of prisoners who have medical conditions that are</p> <p>19 adversely affected by heat or high temperature?</p> <p>20 A. Not -- not during this specific time.</p> <p>21 Q. Not prior to Mr. McCollum's death?</p> <p>22 A. Right.</p> <p>23 Q. Have you ever seen a list like that now?</p> <p>24 A. Yes, during the summertime we do.</p> <p>25 Q. Did that start last summer in 2012?</p>	<p style="text-align: right;">24</p> <p>1 officer, what do you do with it?</p> <p>2 A. We use that to check on the offender during</p> <p>3 the night.</p> <p>4 Q. What do you mean when you say you check on the</p> <p>5 offender during the night?</p> <p>6 A. Well, if he's alive, we ask him if he's doing</p> <p>7 all right. If he's asleep, we just check to make sure</p> <p>8 that they're breathing.</p> <p>9 Q. So do you walk past the guys in the dorms</p> <p>10 and --</p> <p>11 A. Yes.</p> <p>12 Q. -- either talk to them or --</p> <p>13 A. Yes.</p> <p>14 Q. -- verify that you can see their chest moving</p> <p>15 up and down?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Do you do that for everybody or just</p> <p>18 for the guys who are on the heat list?</p> <p>19 A. We do that for everybody. If they're</p> <p>20 sleeping, we usually check to make sure that they're</p> <p>21 breathing. If they're up, we can tell -- we can tell</p> <p>22 that they're all right.</p> <p>23 Q. What do you differently for the guys on the</p> <p>24 heat list?</p> <p>25 A. We just ask -- if they're up, we ask them if</p>
<p style="text-align: right;">23</p> <p>1 A. I think it started the year before that.</p> <p>2 Q. But after Mr. McCollum's death?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Can you tell me about the list, like</p> <p>5 what -- where is it posted?</p> <p>6 A. It was given -- it was given to us in our --</p> <p>7 our turnout folder that we have with the rest of our</p> <p>8 paperwork, and sometimes it's left on the building.</p> <p>9 Q. When you say it's in your turnout folder, can</p> <p>10 you describe for the jury what that means?</p> <p>11 A. It's a folder where we have all -- all of our</p> <p>12 paperwork that we need for the night. It has a roster,</p> <p>13 and some of the other -- other paperwork that we use</p> <p>14 during the night.</p> <p>15 Q. Would the roster be like a list of the</p> <p>16 prisoners that you're --</p> <p>17 A. Yes.</p> <p>18 Q. -- supervising that night? And is the -- the</p> <p>19 heat list, is this -- is there just something on the</p> <p>20 roster indicating that these guys have this condition,</p> <p>21 or is it a separate document?</p> <p>22 A. No. It's on a -- it's on another -- it's on</p> <p>23 another paper with the list of offenders, their bunk</p> <p>24 number, their name, TDC number.</p> <p>25 Q. When you see that list, as a correctional</p>	<p style="text-align: right;">25</p> <p>1 they're feeling all right. If they're sleeping, we do</p> <p>2 the same. We just check to make sure that they're</p> <p>3 breathing.</p> <p>4 Q. Okay. Is there anything else that you're</p> <p>5 supposed to do as a correctional officer when the --</p> <p>6 when you see a name on that list?</p> <p>7 A. In what way?</p> <p>8 Q. Well, you've said that when you're doing your</p> <p>9 rounds, you -- you check to make sure they're breathing</p> <p>10 or ask them a couple of questions when they're on the</p> <p>11 extreme heat list. Do you do anything else, or is that</p> <p>12 the total extent of what you use the extreme heat list</p> <p>13 for?</p> <p>14 A. Well, we -- we check every -- everyone when we</p> <p>15 go in. Our first -- first count usually is a roster</p> <p>16 count where we check -- check everyone's ID, their TDC</p> <p>17 number and check their face.</p> <p>18 Q. And you do that when you first come on duty?</p> <p>19 A. Our first count.</p> <p>20 Q. And when -- when does the first count happen?</p> <p>21 A. We had a -- a change of our -- of what -- all</p> <p>22 the time the counts and everything are, but usually that</p> <p>23 count is -- is within an hour of when we get on the</p> <p>24 building.</p> <p>25 Q. Okay. Now, you spend a lot of time working in</p>

<p style="text-align: right;">26</p> <p>1 the dorms, right?</p> <p>2 A. Yes.</p> <p>3 Q. And there's no air conditioning in those</p> <p>4 dorms, correct?</p> <p>5 A. No.</p> <p>6 Q. You'd agree with me that it gets pretty hot</p> <p>7 back in those dorms, right?</p> <p>8 A. Well, it's Texas. It's supposed to be hot</p> <p>9 during the summertime.</p> <p>10 Q. And you'd agree that there's not much</p> <p>11 difference inside in the dorm and outside in the Texas</p> <p>12 heat, right?</p> <p>13 A. Well, in the dorms, we have -- we have big</p> <p>14 fans that are going 24 hours a day.</p> <p>15 Q. Do the fans make much of a difference, as far</p> <p>16 as you can tell?</p> <p>17 A. Quite a bit.</p> <p>18 Q. Are you ever uncomfortable when you're working</p> <p>19 back in the dorms in the summer?</p> <p>20 A. Like I said, it's Texas. It's supposed to be</p> <p>21 hot.</p> <p>22 Q. It's supposed to be hot. Does staff ever</p> <p>23 complain about the heat in the summer?</p> <p>24 A. In what way?</p> <p>25 Q. Well, do they ever say, it's really hot in</p>	<p style="text-align: right;">28</p> <p>1 are air conditioned, right?</p> <p>2 A. Yes.</p> <p>3 Q. The picket is a place that's air conditioned;</p> <p>4 is that right?</p> <p>5 A. If it works.</p> <p>6 Q. If it works. Okay. Do they work most of the</p> <p>7 time?</p> <p>8 A. Not during the summertime.</p> <p>9 Q. There are other parts in the Hutchins Unit</p> <p>10 where the air conditioning does work pretty regularly</p> <p>11 during the summer, though, right?</p> <p>12 A. On and off.</p> <p>13 Q. Like the warden's office is probably -- the</p> <p>14 air conditioning is probably working there most days,</p> <p>15 right?</p> <p>16 MR. GARCIA: Objection to the extent it</p> <p>17 calls for speculation.</p> <p>18 Q. To the extent that you know.</p> <p>19 A. I -- I wouldn't know.</p> <p>20 Q. When the A/C is working, do some officers</p> <p>21 spend more time in the picket?</p> <p>22 A. We can't do much work from the picket. We</p> <p>23 have -- we have to do most of the work we have from the</p> <p>24 dorms.</p> <p>25 Q. Well, some officers take a break in the picket</p>
<p style="text-align: right;">27</p> <p>1 here, I'm having a hard time doing my job because it's</p> <p>2 so hot?</p> <p>3 A. Well, we all know it's going to be hot.</p> <p>4 Q. But does staff complain about that?</p> <p>5 A. No, not really.</p> <p>6 Q. No?</p> <p>7 A. No.</p> <p>8 Q. You've never heard staff complain to their</p> <p>9 supervisor that it's really hot?</p> <p>10 A. No.</p> <p>11 Q. Do you ever hear prisoners complain about the</p> <p>12 heat in the summer?</p> <p>13 A. Yes.</p> <p>14 Q. Is that a fairly regular complaint that you</p> <p>15 hear from prisoners in the summer?</p> <p>16 A. Yes.</p> <p>17 Q. It's probably fair to say that every summer</p> <p>18 you've worked here, you've probably heard that complaint</p> <p>19 from prisoners?</p> <p>20 A. Yes.</p> <p>21 Q. When you worked at -- you worked at the</p> <p>22 Powledge Unit, you said, from January to March; is that</p> <p>23 right?</p> <p>24 A. Yes.</p> <p>25 Q. Now, there are parts of the Hutchins Unit that</p>	<p style="text-align: right;">29</p> <p>1 where it's air conditioned?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. You'd agree that that air conditioning</p> <p>4 makes a big difference between -- for how you feel,</p> <p>5 wouldn't you?</p> <p>6 A. It's cool.</p> <p>7 Q. It's much more comfortable, right?</p> <p>8 A. Yes.</p> <p>9 Q. And have you ever felt overheated while you</p> <p>10 were working here at the Hutchins Unit?</p> <p>11 A. No.</p> <p>12 Q. Have you ever seen other prison staff go to</p> <p>13 take a break somewhere where it's air conditioned</p> <p>14 because it's too hot?</p> <p>15 A. Yes.</p> <p>16 Q. Is that something you see fairly regularly in</p> <p>17 the summer?</p> <p>18 A. It depends on what building I'm on and who I'm</p> <p>19 working with.</p> <p>20 Q. But that's something you see happen during the</p> <p>21 summer?</p> <p>22 A. Occasionally. I do occasionally.</p> <p>23 Q. You do occasionally. Okay. Like, would you</p> <p>24 say you do that at least once a shift or...</p> <p>25 A. It depends on how much work I got.</p>

<p style="text-align: right;">30</p> <p>1 Q. Okay. Does it depend on where you're working?</p> <p>2 A. Yes.</p> <p>3 Q. Sometimes you will only be working in a place</p> <p>4 where it's air conditioned, right?</p> <p>5 A. No.</p> <p>6 Q. No. Like if -- you wouldn't just work the</p> <p>7 front door where you come in?</p> <p>8 A. No.</p> <p>9 Q. You'd work somewhere else. You'd rotate with</p> <p>10 somebody who's working the front door if working at the</p> <p>11 front door was part of your duty that night?</p> <p>12 A. Well, we only -- we only have the front door</p> <p>13 for an hour in the -- in the morning.</p> <p>14 Q. Okay. I see, because you work the night</p> <p>15 shift?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Have you always worked the night shift?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. So when you say that people are taking</p> <p>20 breaks in air-conditioned spots, officers are taking</p> <p>21 these breaks, they're even doing that during the night</p> <p>22 shift, right?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. Because it's still hot in the middle of</p> <p>25 the night when you're working?</p>	<p style="text-align: right;">32</p> <p>1 A. That's -- that's not my area. Whenever they</p> <p>2 built this thing, that's the way it was built.</p> <p>3 Q. Okay. Have you ever felt dizzy or nauseous</p> <p>4 while working here during the summer?</p> <p>5 A. No.</p> <p>6 Q. Do you drink more water when you're working</p> <p>7 here during this summer?</p> <p>8 A. I drink -- I usually bring a bottle of</p> <p>9 Gatorade with me to work.</p> <p>10 Q. Do you do that every day or just during the</p> <p>11 summer?</p> <p>12 A. Every day.</p> <p>13 Q. And do you -- do you just drink the Gatorade</p> <p>14 that's in there, or do you sometimes fill it up with</p> <p>15 additional water after you finish the Gatorade?</p> <p>16 A. I just drink the Gatorade that's in the</p> <p>17 bottle.</p> <p>18 Q. Okay. Is there air conditioning in your home,</p> <p>19 Mr. Clark?</p> <p>20 A. Yes.</p> <p>21 Q. Is there air conditioning in your car?</p> <p>22 A. Yes.</p> <p>23 Q. I see you have a document in front of you on</p> <p>24 your left there.</p> <p>25 A. Yes.</p>
<p style="text-align: right;">31</p> <p>1 A. Yes.</p> <p>2 Q. Now, the dorms, the windows to those dorms</p> <p>3 don't open; is that right?</p> <p>4 A. No.</p> <p>5 Q. And you said there are fans. How many fans</p> <p>6 are there?</p> <p>7 A. There are two big fans that are up on the</p> <p>8 wall.</p> <p>9 Q. Okay. Were there only two fans there in July</p> <p>10 of 2011 when Mr. McCollum was here?</p> <p>11 A. Yes.</p> <p>12 Q. Prisoners don't have personal fans here at</p> <p>13 the --</p> <p>14 A. No.</p> <p>15 MR. GARCIA: Let him finish his question.</p> <p>16 Okay?</p> <p>17 Q. They don't have personal fans here at the</p> <p>18 Hutchins Unit?</p> <p>19 A. No.</p> <p>20 Q. Is that because there's no plug outlets in the</p> <p>21 dorms?</p> <p>22 A. Yes.</p> <p>23 Q. As far as you know, there's no security reason</p> <p>24 that inmates living in the dorms here at the Hutchins</p> <p>25 Unit couldn't have a personal fan?</p>	<p style="text-align: right;">33</p> <p>1 Q. Is that what you reviewed in preparation for</p> <p>2 your deposition today?</p> <p>3 A. That was -- that was the -- the statement I</p> <p>4 had to make after -- after it happened.</p> <p>5 Q. Okay. Did you review anything else before</p> <p>6 your deposition today?</p> <p>7 A. Some of what the lieutenant wrote and the</p> <p>8 sergeant.</p> <p>9 Q. Those would be the statements that Sergeant</p> <p>10 Tate and Lieutenant Sanders wrote?</p> <p>11 A. Yes.</p> <p>12 Q. And those are kind of formatted the same as</p> <p>13 your statement, they're just different content?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. I'll come back to your statement in a</p> <p>16 second. Is this the statement from Sergeant Tate that</p> <p>17 you reviewed?</p> <p>18 A. I just wrote -- read over it once or twice. I</p> <p>19 didn't -- I didn't look at it all that -- all that much.</p> <p>20 Q. Okay. But you read it a few times --</p> <p>21 A. Yes.</p> <p>22 Q. -- before your deposition today?</p> <p>23 MR. MEDLOCK: Okay. Let's go ahead and</p> <p>24 mark this as...</p> <p>25 (Exhibit 12 marked.)</p>

<p style="text-align: right;">78</p> <p>1 A. Like I said, it's gossip.</p> <p>2 Q. Let's say that you had actually seen an</p> <p>3 officer sleeping on the job. Would you make a complaint</p> <p>4 then?</p> <p>5 A. I might tell the sergeant.</p> <p>6 Q. Would you be concerned that you -- you might</p> <p>7 be fired if --</p> <p>8 A. No.</p> <p>9 Q. -- you made a complaint like that? Okay.</p> <p>10 Have you heard about any criminal charges being brought</p> <p>11 against Warden Polk?</p> <p>12 A. No.</p> <p>13 Q. Okay. You don't know anything about that?</p> <p>14 A. No.</p> <p>15 Q. Okay.</p> <p>16 MR. MEDLOCK: Pass the witness.</p> <p>17 MR. GARCIA: We'll reserve until trial.</p> <p>18 THE VIDEOGRAPHER: Going off the record</p> <p>19 at 3:50 p.m.</p> <p>20 (Exhibit 16 marked.)</p> <p>21 (Deposition concluded at 3:50 p.m.)</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">80</p> <p>1 _____</p> <p>2 I, RICHARD J. CLARK, have read the foregoing</p> <p>3 deposition and hereby affix my signature that same is</p> <p>4 true and correct, except as noted above.</p> <p>5</p> <p>6 _____</p> <p>7 RICHARD J. CLARK</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">79</p> <p>1 CHANGES AND SIGNATURE</p> <p>2 WITNESS: RICHARD J. CLARK</p> <p>3 DATE OF DEPOSITION: FEBRUARY 7, 2013</p> <p>4 PAGE LINE CHANGE REASON</p> <p>5 _____</p> <p>6 _____</p> <p>7 _____</p> <p>8 _____</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 _____</p> <p>20 _____</p> <p>21 _____</p> <p>22 _____</p> <p>23 _____</p> <p>24 _____</p> <p>25 _____</p>	<p style="text-align: right;">81</p> <p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE NORTHERN DISTRICT OF TEXAS</p> <p>3 DALLAS DIVISION</p> <p>4 STEPHEN McCOLLUM,</p> <p>5 STEPHANIE KINGREY, and</p> <p>6 SANDRA McCOLLUM,</p> <p>7 individually and as</p> <p>8 heirs at law to the</p> <p>9 Estate of LARRY GENE</p> <p>10 McCOLLUM,</p> <p>11 Plaintiffs,</p> <p>12 VS Â§ CIVIL ACTION NO.</p> <p>13 Â§ 3:12-cv-02037</p> <p>14 BRAD LIVINGSTON, JEFF</p> <p>15 PRINGLE, and the TEXAS</p> <p>16 DEPARTMENT OF CRIMINAL</p> <p>17 JUSTICE,</p> <p>18 Defendants.</p> <p>19</p> <p>20 REPORTER'S CERTIFICATION</p> <p>21 ORAL AND VIDEOTAPED DEPOSITION OF</p> <p>22 RICHARD J. CLARK</p> <p>23 FEBRUARY 7, 2013</p> <p>24</p> <p>25 I, Tina Terrell Burney, Certified Shorthand</p> <p>Reporter in and for the State of Texas, hereby certify</p> <p>to the following:</p> <p>That the witness, RICHARD J. CLARK, was duly</p> <p>sworn by the officer and that the transcript of the oral</p> <p>deposition is a true record of the testimony given by</p>

21 (Pages 78 to 81)

1 the witness;

2 I further certify that pursuant to FRCP Rule
3 30(f)(1) that the signature of the deponent:

4 _____ was requested by the deponent or a
5 party before the completion of the deposition and is to
6 Be returned within 30 days from date of receipt of the
7 transcript. If returned, the attached Changes and
8 Signature Page contains any changes and the reasons
9 therefor;

10 _____ was not requested by the deponent or a
11 party before the completion of the deposition.

12 I further certify that I am neither attorney
13 or counsel for, nor related to or employed by, any of
14 the parties or attorneys to the action in which this
15 deposition was taken. Further, I am not a relative or
16 employee of any attorney of record in this case, nor am
17 I financially interested in the outcome of the action.

18 Subscribed and sworn to on this the _____
19 day of February, 2013.

20
21 _____
22 TINA TERRELL BURNEY
23 Texas CSR No. 2908
24 Expiration Date: 12/31/14
25 WRIGHT WATSON & ASSOCIATES, L.L.C.
3307 Northland Drive, Suite 185
Austin, Texas 78731
800.375.4363 Fax 512.474.8802
Firm Registration No. 225

	Evening (1700-midnight)	A. Okoro
Wednesday, July 20	Early morning (midnight – 0800)	A. Okoro
	Daytime (0800 – 1700)	None – Call assigned facility psychiatrist/mlp
	Evening (1700-midnight)	J. Oliver
Thursday, July 21	Early morning (midnight – 0800)	J. Oliver
	Daytime (0800 – 1700)	None – Call assigned facility psychiatrist/mlp
	Evening (1700-midnight)	S. Parker
Friday, July 22	Early morning (midnight – 0800)	S. Parker
	Daytime (0800 – 1700)	None – Call assigned facility psychiatrist/mlp
	Evening (1700-midnight)	S. Reddy
Saturday, July 23	Early morning (midnight – 0800)	S. Reddy
	Daytime (0800 – 1700)	J. Tennison
	Evening (1700-midnight)	J. Tennison
Sunday, July 24	Early morning (midnight – 0800)	J. Tennison
	Daytime (0800 – 1700)	J. Wang

<http://cmcweb.utmb.edu/Mental%20Health%20Services/2010%20calanders/July%202011....> 6/29/2011

UTMB/CMC NURSING SERVICES POLICY MANUAL	Effective Date:	03/08	Number: E-37.2 Page 1 of 3
	Reviewed:	10/12	
	Revised:	10/12	
	Formulated:	03/08	
TELEPHONE TRIAGE PROTOCOLS FOR REGISTERED NURSES			

Purpose:

To provide telephone triage guidelines to the Registered Nurse (RN) providing direction to Security Staff for patients with medical complaints at facilities where medical personnel are not on-site.

Audience:

This policy applies to all CMC RNs at designated facilities providing 24 hour on-site nurse staffing.

Policy:

The book entitled, *Telephone Triage Protocols for Nurses*, third edition, by Julie K. Briggs, published by Lippincott, will serve as a guideline for nurses assuming on-call responsibilities and/or assessing patients in the clinical setting.

Telephone Triage Protocols for Nurses assists health care professionals in asking appropriate questions to quickly assess the severity of a problem. The protocols ARE NOT DESIGNED to diagnose the caller's medical condition. The book contains more than 200 protocols that cover a wide range of the most common symptoms, disorders, and medical emergencies.

According to the author, "Telephone triage and advice lines have become a rapidly growing industry and show all the signs of continued growth. It is also the newest medical-legal threat. Although there is virtually nothing in the health care field that is risk-free, there are a variety of ways to reduce the risk when giving telephone advice. Experts in the telephone triage business agree that the use of approved protocols substantially reduces the risk in giving advice over the phone. Protocols establish a standard of care. They provide a mechanism to address potentially serious conditions in a consistent manner when you cannot see or touch the person."

All registered nurses at designated facilities providing 24 hour on-site nurse staffing will receive telephone triage training. The Nurse Manager is responsible for placing the following in the nurse's personnel file which is co-signed by the RN and the nurse manager:

- ◆ Documentation stating that the RN has received telephone triage training
- ◆ Documentation stating that the RN understands and acknowledges that once telephone contact is established with the offender patient, a

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TELEPHONE TRIAGE PROTOCOLS FOR REGISTERED NURSES			

patient-nurse relationship has been established. Failure to adhere to the protocols in this book, and the policies and procedures of UTMB CMC and TDCJ Health Services may lead to discipline up to and including termination.

- ◆ Documentation stating that the RN understands that when in doubt always err on the side of patient safety.

Each protocol follows a standard design, which helps the RN to efficiently utilize information:

- **Key Questions** prompts the RN to address key areas before proceeding through the protocol. This always includes asking and recording the offender patient's name, TDCJ #, age, onset and frequency of symptoms.
- **Assessment** contains the questions listing the symptoms, conditions, or combination of factors that should be assessed to determine urgency.
- **Action** is organized around yes and no answers to the assessment questions. If the offender patient answers "no" to the questions, the RN is directed to the next category of assessment questions. If the offender patient answers "yes", concrete advice is given regarding when and where to receive care. This advice is prioritized so that emergency actions always appear first. Actions the nurse should take appear in *italicized* type. Instructions to the offender patient appear in "quotation marks".
- **Action options** are explained as follows:
 - "Call an ambulance" Security or LVN is directed by the RN to send the offender patient to the nearest local community hospital ED 911.
 - "Seek Emergency Care Now" Security is directed by the RN to send the offender patient to the nearest local community hospital ED 911.
 - "Seek Medical Care within 2-4 hours" A. If the facility being consulted is within a designated HUB area, the RN will instruct Security staff to bring the patient to the HUB for a full assessment. B. If the facility being consulted is NOT within a designated HUB and a licensed nurse or provider will not be on the facility within 2 hours, Security will be instructed to transport the patient to the nearest local community hospital ED. "Seek Medical Care Within 24-48 hours" The RN will instruct the Security officer to issue the patient a pass to come to the medical clinic the next day.
 - "Call Back or Call PCP for Appointment if No Improvement" The RN will instruct the Security officer to issue the patient a pass to come to the medical clinic the next day.
 - "The Home Care Instructions" explain care that should be given in the home before emergency help arrives, while waiting for an appointment, or if the

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TELEPHONE TRIAGE PROTOCOLS FOR REGISTERED NURSES			

problem can be managed at home. In many instances these instructions DO NOT apply to a correctional setting. The RN will use discretion when and when not to use these instructions based on the correctional environment the offender is housed and TDCJ Health Services Policies.

Procedure

1. When the RN receives a call, the RN will ask Security to place the patient in front of the Digital Medical System (DMS) monitor. The RN will connect to the facility. If the patient cannot be placed in front of the DMS monitor, the RN MUST ask security to place the offender patient on the telephone and speak DIRECTLY to the offender patient before proceeding with the telephone triage protocols. If this is NOT possible, or if the offender patient is unconscious or unresponsive which is preventing the offender patient from talking on the telephone, the nurse will direct security to call 911 and transport the offender patient to the nearest hospital ED. If medical department is closed and no medical staff onsite, TDCJ staff will complete and send the FORVUS email notification form. Refer to CMCHC Policy A-08.2
2. While speaking directly with the offender patient, the RN will utilize the appropriate protocol (s) associated with the offender patient's complaints or symptomatology and follow the steps as outlined in the protocol.
3. The RN will complete the Telephone Triage Documentation Form for each call received.
4. The RN will contact the provider on call for the facility where the patient is assigned for questions or concerns regarding the disposition of the patient or for further orders if the patient is transported to a designated HUB facility.
5. At the conclusion of the shift, each triage form will be scanned and emailed via UTMB Web-Mail to the responsible Nurse Manager of the patient's unit of assignment (UOA). NMs should always designate who is covering for them in their absence and alert their HUB or 24 call center to avoid missing an overnight triage.
6. The Nurse Manager of the patient's UOA will:
 - a. ensure appropriate patient follow up the following day
 - b. forward the triage form to Mental Health if any self-injurious behavior is documented.
 - c. have the form scanned into the patient's medical record

UTMB/CMC NURSING SERVICES POLICY MANUAL	Effective Date: 03/08	Number: E-37.2
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TELEPHONE TRIAGE DOCUMENTATION FORM		

NURSING TRIAGE FORM

Date/Time: Facility: _____
 Name of offender Patient: _____
 TDCJ #: _____
 Name of Security Officer Calling _____
 Patient's Age Sex: _____
 Presenting Problems/Symptoms _____

Protocol used: (List protocol name and page number):

Briggs, J. K. (2007). Telephone Triage Protocols for Nurses 3rd ed. Philadelphia: Lippincott Williams & Wilkins.

1. _____
2. _____
3. _____
4. _____
5. Other _____

Problem: _____ Emergent _____ Urgent _____ Non-Urgent
 (Immediately) (2 hrs) (Pass Issued)

Circle Correct Information

Telephone Triage

1. Instructions given to security officer to call 911 and transport offender patient to nearest local community hospital ED.
2. Instructions given to security officer to transport the offender patient to the designated HUB for a full assessment and further care. (applicable only if the facility is within a designated HUB area)
3. Instructed the Security officer to issue a pass to the offender patient to come to medical the next day.
4. Other as ordered by a provider: _____

Additional
 Comments _____

UTMB/CMC NURSING SERVICES POLICY MANUAL	Effective Date: 03/08	Number: E-37.2
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	Revised: 03/12	Page 2 of 2
	Formulated: 03/08	
TELEPHONE TRIAGE DOCUMENTATION FORM		

Signature of nurse

E-37.2, Attachment B

The University of Texas Medical Branch

*School of Medicine
School of Biomedical Services
School of Allied Health Sciences
School of Nursing*

*Marine Biomedical Institute Graduate
Institute for the Medical Humanities
UTMB Hospitals and Clinics*



TELEPHONE TRIAGE PROTOCOLS FOR REGISTERED NURSES

All Registered Nurses:

In an effort to ensure the highest quality health care services possible the Telephone Triage Protocols policy was developed. As part of the implementation of this policy and our commitment to life-long learning, all Registered Nurses will complete a structured inservice training program.

The following standards are noteworthy:

- I understand and acknowledge that once telephone contact has been initiated with the offender patient, a patient-nurse relationship has been established. Failure to adhere to protocols in the Lippincott "Telephone Triage Protocols for Nurses" and the policies and procedures of UTMB CMC / TJJD, FBOP, and TDCJ Health Services may lead to disciplinary action up to and including termination.
- I understand that when in doubt on how to proceed, as a patient advocate, it is my responsibility to always err on the side of patient safety.

Telephone Triage Protocol Inservice Completed this Date: _____

I have reviewed these standards and I understand that I am responsible for ensuring that my practice complies with these standards while employed by UTMB Correctional Managed Care.

Employee Signature

Date

Nurse Manager Signature

Date

Retain in employee file

CORRECTIONAL MANAGED HEALTH CARE POLICY MANUAL	Effective Date: 3-11-2009	NUMBER: E-41.1 Page <u>1</u> of <u>1</u>
	Replaces: 01/07	
	Formulated: 5/95 Reviewed: 01/11 <u>09/11</u>	
EMERGENCY SERVICES		

PURPOSE: To provide a mechanism by which offenders will receive 24 hour emergency health care for acute illnesses or unexpected health needs that cannot be deferred until the next scheduled sick call or clinic.

POLICY:

- I. All members of the Health Services and security staff will be familiar and comply with the procedures for obtaining emergency medical care and responding to emergencies. Ambulance transportation for the movement of any offender whose medical condition requires this mode of travel will be provided.
- II. During hours of operation, emergency room services will be available on every facility and will be documented on an appropriate Emergency Room Record form (HSM-16). A plan for emergency services will be in place to cover off hours and for levels of services not available on the facilities.

PROCEDURE:

- I. Each facility health administrator (TTUHSC)/practice manager (UTMB) or his/her designee will maintain in a secure, readily accessible location, the procedure for activating the appropriate emergency medical services to include names and telephone numbers of people to be notified and/or services such as ambulance and hospital. This information will be readily accessible to all personnel (health care and correctional staff).
- II. The decision to transfer a patient for further medical care, choice of appropriate facility, and mode of transportation are determined by the physician or senior Health Services provider in compliance with Utilization Review protocols. See Health Services Policy A-08.2 for notification of transfer procedures.
- III. Emergency drugs, medical supplies and equipment will be regularly maintained and accessible in the event of an emergency. All Regional Medical Facilities (RMF) and Infirmary Crash Carts as well as Facilities with Infirmaries will maintain emergency drugs as required in Pharmacy Policy 60-05 Attachment A. All facility clinics will maintain emergency drugs as defined in Pharmacy Policy 60-05 Attachment B. Facilities performing invasive procedures or administering contrast medium should keep at a minimum the medication defined in Pharmacy Policy 60-05 Attachment C.
- IV. Acute illness, for mental health conditions, includes significant hallucinations/delusions, bizarre behavior or appearance, or risk of self-injury.
- V. First Responders will be trained to respond to emergency situations within 4 minutes after notification.

Index: Emergency health care
Reference: 2008 NCHC Standard P-E-08, Emergency Services (essential)
Correctional Managed Health Care Pharmacy Policy 60-05
ACA Standard 4-4389 (Mandatory)

2015 WL 327508, 51 NDLR P 80

2015 WL 327508
United States District Court,
N.D. Texas,
Amarillo Division.

Justin BORUM, and Chelsea Rushing,
individually and as heirs-at-law to the Estate
of Terry Borum, and Grady Borum, Plaintiffs,
v.

SWISHER COUNTY, Defendant.

No. 2:14-CV-127-J.

|
Signed Jan. 26, 2015.

Attorneys and Law Firms

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MEMORANDUM OPINION AND ORDER

MARY LOU ROBINSON, District Judge.

*1 On December 29, 2014, Defendant filed a *Partial No Evidence Motion for Summary Judgment* and supporting brief, seeking dismissal of Plaintiffs' claims under the Americans with Disabilities Act ("ADA") and the Rehabilitation Act ("RA"). Defendant's Motion did not address Plaintiffs' separate claims under 42 U.S.C. § 1983. Plaintiffs filed a response on January 7, 2015. Defendant did not file a reply. Defendant's motion is DENIED.

BACKGROUND

On February 1, 2013, Terry Borum—a fifty-three-year-old pre-trial detainee at the Swisher County jail—collapsed in his cell, struck his head, and was knocked unconscious. Approximately two to three hours later, Mr. Borum died at the Northwest Texas Hospital in Amarillo. According to the autopsy, the cause of death was blunt force trauma to the head, caused by Mr. Borum's fall.

Plaintiffs—the son, daughter, and father of Terry Borum, and the heirs-at-law to the Estate of Terry Borum—filed their complaint in this Court on May 28, 2014 against Defendant Swisher County, Texas. In their complaint, Plaintiffs assert causes of action under the ADA, the RA, and 42 U.S.C. § 1983. Plaintiffs also assert a survival claim and a wrongful death claim, pursuant to § 1983 and the ADA/RA. Defendant filed a *Rule 12(b)(6) Motion to Dismiss* on June 20, 2014, which the Court denied on September 29, 2014.

Terry Borum suffered from alcoholism and severe depression. In 2011, Mr. Borum attempted to commit suicide with a shotgun. The suicide attempt was unsuccessful and left Mr. Borum permanently disfigured—the shotgun blast destroyed significant portions of Mr. Borum's face. As a result, Mr. Borum could not speak clearly, had difficulty breathing, and was blind in one eye. He also could not eat solid food and instead required a liquid diet, which was administered through a feeding tube sewn inside his stomach. County Sheriff Cody Grubb was aware of Mr. Borum's physical disabilities, suicide attempt, and alcoholism prior to his detention in the Swisher County jail. Likewise, jail staffers Jason Irwin and Mark Sanchez were aware that Mr. Borum was an alcoholic.

On January 28, 2013, Mr. Borum was arrested on an outstanding warrant and was detained in the Swisher County jail. The official who booked Mr. Borum noted his physical deformities, past suicide attempt, and unique feeding requirements. At the time of the booking, jail administrators were concerned about their ability to properly care for a detainee like Mr. Borum:

“Q: When you saw the mug shot, did you think there was going to be a problem with housing Mr. Borum safely in the jail?”

A: Yeah.

Q: Tell me why you thought that.

A: You could obviously tell he was a medical risk. I mean, we couldn't—we couldn't take care of him.”

Pointer Dep. 17:13–20 (App.59). Members of the jail staff were also aware that Mr. Borum was experiencing symptoms of alcohol withdrawal, including hallucinations, at the time of his detention.

*2 During the course of Mr. Borum's three-plus days in the Swisher County jail, he received no medical care of any kind, despite the fact that he began hallucinating, behaved erratically, and was likely suffering from delirium tremens ("DTs")-a severe form of alcohol withdrawal that causes tremors and other changes to the nervous system. Indeed, jail staffer Martin Sanchez expressly stated that Mr. Borum's serious medical conditions were ignored by the jail staff:

"Q: Did you ever ignore something that Mr. Borum needed?

A: Yes.

Q: What'd you ignore?

A: His medical condition."

Sanchez Dep. 217:5-9 (App.17). Jail staffers did not receive training on providing medical care to prisoners or on accommodating prisoners with disabilities. Although the jail administrator had requested such training in the past, those requests were denied because there wasn't room in the budget. As a result, jail staffers admitted that "we were understaffed and not really medically qualified to take care of someone in [Mr. Borum's] condition." Irwin Dep. 15:18-20 (App.50).

The only food Mr. Borum received during his three days of confinement was a mixture of honey and orange juice, which was the County's standard method of "treating" inmates experiencing alcohol withdrawal symptoms. Sheriff Grubb stated his belief that the County should continue to use the honey and orange juice treatment because the cost of providing actual medical care to inmates experiencing alcohol withdrawal was too expensive. The County also failed to provide Mr. Borum with the type of liquid diet necessitated by his disability and feeding tube.

Eventually, because Mr. Borum's physical and mental condition continued to deteriorate, jail officials placed him in a detox cell, where he spent the night screaming incoherently, talking to invisible friends, and trying to pull an imaginary person out of the toilet. Despite this erratic behavior, no member of the jail staff called a hospital, a doctor, or 911. However, Mr. Sanchez did discuss the situation with Sheriff Grubb and recommended that Mr. Borum be removed from the jail and transferred to a hospital, due to his unique physical deformities. Mr. Sanchez expressed reservations about the jail's ability to properly care for Mr. Borum:

"Q: Did you [try to get Mr. Borum transferred out of the jail] because you were concerned about Mr. Borum?

A: I just-I just didn't want somebody to die in our jail.... That was like a mistake waiting to happen. And, no, I didn't want it happening on my shift."

Sanchez Dep. 225:16-22 (App.21). However, Sheriff Grubb declined to transfer Mr. Borum to a hospital, basing his decision, at least in part, on financial concerns and budgetary constraints-the Swisher County jail's budget for medical care was just \$7,500 annually.

Mr. Borum collapsed in his cell at approximately 8:00 A.M. on February 1, 2013, struck his head, and was knocked unconscious. After the jail administrator called 911, EMS arrived and transported Mr. Borum to Swisher Memorial Hospital. He arrived at 8:30 A.M. and was given a CT scan, which revealed a subdural hematoma-a collection or pooling of blood outside of the brain. The doctors at Swisher Memorial Hospital determined that Mr. Borum needed medical care that the hospital could not provide and decided to transfer him to Northwest Texas Hospital in Amarillo. Upon his arrival at Northwest Texas Hospital, doctors examined Mr. Borum and determined that it was too late to save him. Mr. Borum died at the hospital.

STANDARD FOR SUMMARY JUDGMENT MOTIONS

*3 This Court may grant summary judgment on a claim if the record shows that there is no genuine issue of material fact and that "the movant is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(a). A genuine issue of material fact exists if a reasonable jury could return a verdict for the nonmoving party on the issue. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). Where the nonmovant bears the burden of proof at trial, the movant may either offer evidence that undermines one or more of the essential elements of the nonmovant's claim, or point out the absence of evidence supporting an essential element of the nonmovant's claim. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986) (where there is an absence of evidence supporting an essential element of the nonmovant's claim, "there can be 'no genuine issue as to any material fact,' since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial").

If the movant successfully carries this burden at the summary judgment stage, the burden then shifts to the nonmovant to show that the court should not grant summary judgment. *Id.* at 324. The nonmovant must set forth specific facts that show a genuine issue for trial-only a genuine dispute over a material fact will preclude summary judgment. *Anderson*, 477 U.S. at 248, 256. The nonmovant cannot rely on conclusory allegations, improbable inferences, or unsupported speculation. *Krim v. BancTexas Group, Inc.*, 989 F.2d 1435, 1449 (5th Cir.1993). In ruling on a summary judgment motion, the court must review the facts and draw all reasonable inferences in favor of the nonmoving party—here, the Plaintiffs. *See Reid v. State Farm Mut. Auto. Ins. Co.*, 784 F.2d 577, 578 (5th Cir.1986).

DISCUSSION

Under the ADA, “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132. Similarly, under the RA, “[n]o otherwise qualified individual with a disability ... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 29 U.S.C. § 794(a).

The RA is operationally identical to the ADA in that both statutes prohibit discrimination against disabled persons; however, the ADA applies only to public entities while the RA applies to any federally funded programs or activities, whether public or private. *See Kemp v. Holder*, 610 F.3d 231, 234 (5th Cir.2010). Claims under both acts are analyzed using the same legal standards. *See Frame v. City of Arlington*, 657 F.3d 215, 223 (5th Cir.2011); *McPherson v. MHSAA*, 119 F.3d 453, 460 (6th Cir.1997) (“[b]ecause the standards under both of the acts are largely the same, cases construing one statute are instructive in construing the other”). Thus, the Court will treat Plaintiffs’ ADA and RA claims coextensively and will analyze them together, as though they were a single claim.

*4 Establishing a prima facie case of disability-based discrimination under Title II of the ADA requires the plaintiff to prove (1) that he is a qualified individual under the ADA;

(2) that he is being excluded from participation in, or is being denied benefits, services, programs, or other activities for which a public entity is responsible, or is otherwise being discriminated against by the public entity; and (3) that such exclusion, denial of benefits, or discrimination is by reason of his disability. *See Melton v. Dall. Area Rapid Transit*, 391 F.3d 669, 671–72 (5th Cir.2004).

In addition to a disability-based discrimination prohibition, the ADA also imposes on public entities an affirmative obligation to make reasonable accommodations for disabled individuals—including prisoners—who take advantage of a public entity’s services or programs. *See Pa. Dep’t of Corr. v. Yeskey*, 524 U.S. 206, 213, 118 S.Ct. 1952, 141 L.Ed.2d 215 (1998); *Bennett–Nelson v. La. Bd. of Regents*, 431 F.3d 448, 454 (5th Cir.2005); 28 C.F.R. § 35.130(b) (7) (“[a] public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity”). An accommodation is considered reasonable if it is sufficient to provide a disabled person “meaningful access to the benefit” offered by a public entity. *See Alexander v. Choate*, 469 U.S. 287, 301, 105 S.Ct. 712, 83 L.Ed.2d 661 (1985).

This “reasonable accommodation” theory of discrimination is different from, yet related to, the prima facie case of disability-based discrimination discussed above. Specifically, a plaintiff can satisfy the second and third prongs of the prima facie case of disability discrimination by establishing that the public entity has failed to make reasonable accommodations for a disabled person who uses the services provided by the public entity. *See Garrett v. Thaler*, 560 F. App’x 375, 382 (5th Cir.2014) (holding that a prison’s failure to satisfy the reasonable accommodation requirement may constitute a denial of services and intentional discrimination sufficient to satisfy the second and third prongs of the Title II ADA inquiry).

Defendant’s summary judgment motion seeks dismissal of Plaintiffs’ ADA and RA claims under Fed.R.Civ.P. 56. In its motion, Defendant challenges Plaintiffs to produce three categories of evidence: (A) evidence that Defendant excluded Mr. Borum from participating in, or denied Mr. Borum the benefits of, services, programs, or activities for which Defendant was responsible; (B) evidence that Defendant’s actions were motivated by discriminatory animus or ill will;

and (C) evidence that Defendant refused to provide Mr. Borum an accommodation.

A EVIDENCE THAT DEFENDANT EXCLUDED MR. BORUM FROM PARTICIPATING IN OR DENIED MR. BORUM THE BENEFITS OF, SERVICES, PROGRAMS, OR ACTIVITIES FOR WHICH DEFENDANT WAS RESPONSIBLE

*5 To satisfy the second element of the prima facie case of discrimination under Title II of the ADA, a plaintiff must establish that he is being excluded from participation in, or is being denied benefits, services, programs, or other activities for which a public entity is responsible. *See Melton v. Dall. Area Rapid Transit*, 391 F.3d 669, 671 (5th Cir.2004). The Supreme Court, in a unanimous opinion authored by Justice Scalia, held that confinement in a jail is a program or service under the ADA and RA because “[m]odern prisons provide inmates with many recreational ‘activities,’ medical ‘services,’ and educational and vocational ‘programs,’ all of which at least theoretically ‘benefit’ the prisoners (and any of which disabled prisoners could be excluded from participation in).” *Pa. Dep’t of Corr. v. Yeskey*, 524 U.S. 206, 210, 118 S.Ct. 1952, 141 L.Ed.2d 215 (1998) (emphasis added); *see also United States v. Georgia*, 546 U.S. 151, 157, 126 S.Ct. 877, 163 L.Ed.2d 650 (2006) (“it is quite plausible that the alleged deliberate refusal of prison officials to accommodate [an inmate’s] disability-related needs in such fundamentals as mobility, hygiene, [and] medical care ... constituted ‘exclu[sion] from participation in or ... deni[al of] the benefits of the prison’s ‘services, programs, or activities’”).

In its partial Motion for Summary Judgment, Defendant asserts that after seven months of discovery “there is no evidence Swisher County excluded Terry Borum from participating in, or denied Terry Borum the benefits of, services, programs, or activities, for which the County was responsible.” However, depositions of several Swisher County officials provide ample evidence that Defendant denied Mr. Borum access to both (1) food and (2) medical care while he was confined in the Swisher County jail.

1. Evidence that Defendant Denied Mr. Borum Access to Food

First, Plaintiffs produced evidence that Defendant denied Mr. Borum access to basic sustenance for at least three

days. Because of Mr. Borum’s disfigured face, he used a feeding tube sewn into his stomach to eat. Throughout his confinement, jail officials failed to provide Mr. Borum with the nutritional supplements required by his feeding tube:

“Q: Was anything done to try and buy new [feeding supplements] for Mr. Borum?

A: No, sir.”

Pointer Dep. 40:19–21 (App.60). Instead of providing him nutrition through his feeding tube, jail officials periodically fed Mr. Borum a mixture of honey and orange juice:

“Q: And just so I’m clear, the decision to give him honey and orange juice, that was an intentional choice you made?

A: Yes.”

Grubb Dep. 114:2–5 (App.40).

“Q: Other than the honey and orange juice was the major thing that he consumed in the jail; is that fair?

A: To my knowledge, yes, sir.”

Irwin Dep. 38:4–7 (App.56).

“Q: Did you tell Sheriff Grubb you were concerned that [Mr. Borum] hadn’t eaten anything?

A: Yes, sir”

Irwin Dep. 38:11–13 (App.56).

2. Evidence that Defendant Denied Mr. Borum Access to Medical Care

*6 Second, Plaintiffs produced evidence that Defendant denied Mr. Borum access to medical care for the severe alcohol withdrawal and DTs he was experiencing. Jail administrators were aware that Mr. Borum was an alcoholic, was experiencing hallucinations, was at risk of injury, and needed medical care:

“Q: Okay. That—that night before, you know, the symptoms, now that you know about alcohol withdrawal and DTs, were pretty severe; correct?

A. Yes.”

Sanchez Dep. 158:4–7 (App.12).

“Q: Do you agree with Mr. Sanchez that Mr. Borum needed to be placed in another facility for his own medical benefit?

A: Yes.”

Grubb Dep. 116:22–25 (App.41).

“Q: And what did you tell Mr. Sanchez?

A: That-that due to [Mr. Borum's] conditions and we were understaffed and not really medically qualified to take care of someone in his condition, that we needed to either transfer him to somewhere else or give him a [personal recognizance] out.”

Irwin Dep. 15:17–22 (App.50). “You could obviously tell [Mr. Borum] was a medical risk. I mean, we couldn't-we couldn't take care of him.” Pointer Dep. 17:18–20 (App.59).

Despite awareness of this medical risk, Swisher County officials consciously chose not to call a doctor or a hospital because they were concerned about exceeding their limited budget for prison medical care:

“Q: Did you ever ignore something that Mr. Borum needed?

A: Yes.

Q: What'd you ignore?

A: His medical condition.”

Sanchez Dep. 217:5–9 (App.17). “We didn't have the manpower, like I said, to send somebody up there every day around the clock. You know, yes, you know, his hospital bills were incurring. We have a budget, you know. I mean, I had to try to keep it within the scope of the budget.” Grubb Dep. 56:15–19 (App.32).

“Q: Okay. Similarly, you intentionally chose not to take him to a hospital, correct?

A: Correct.

Q: Intentionally chose not to call a doctor, correct?

A: Correct.”

Grubb Dep. 114:12–17 (App.40).

Indeed, Swisher County's only attempt to “treat” Mr. Borum's alcohol withdrawal and DTs involved feeding him honey and orange juice:

“Q: Now, when you were told that Mr. Borum was going through detox, were you aware of anything that was being done for him?

A: Yes.

Q: What was the county doing for Mr. Borum?

A: We were giving him orange juice and honey.

...

Q: You didn't think that was an appropriate medical treatment?

A: No.”

Pointer Dep. 42:20–25, 43:23–25 (App.62–63).

The Swisher County jail also did not have anyone on staff with the knowledge required to treat alcohol withdrawal and DTs, or to properly care for disabled prisoners:

“Q: And had-had you arranged for or seen to it that anybody at the jail had any specialized training on this condition known as DTs or delirium tremens?

A: No, sir.”

Grubb Dep. 34:6–9 (App.30).

“Q: At any point while you were at Swisher County, do you recall receiving any training about the need to accommodate people's disabilities while at the jail?

*7 A: No, sir, no training.”

Grubb Dep. 171:24–25, 172:1–3 (App.45–46).

Defendant asserts that even if it did deny Mr. Borum access to certain services or programs, there is no evidence that it was actually *responsible* for those programs and services. However, providing food and medical care to prisoners is undoubtedly a program or service for which Defendant was responsible. State and county jails have a constitutional obligation under the Eighth Amendment and the Due Process Clause of the Fourteenth Amendment to “tend to essentials of [prisoners'] well-being,” including food and medical care.

Hare v. City of Corinth, 74 F.3d 633, 638–39 (5th Cir.1996); *Colle v. Brazos Cnty., Tex.*, 981 F.2d 237, 244 (5th Cir.1993).

Viewing this evidence in the light most favorable to the Plaintiffs, a jury could find that Swisher County was responsible for providing food and medical care to Mr. Borum, yet denied Mr. Borum those services by feeding him nothing more than honey and orange juice for three days and by failing to call a doctor, hospital, or otherwise provide medical care for Mr. Borum when it was clear that he was experiencing severe symptoms of alcohol withdrawal and DTs. Defendant's partial Motion for Summary Judgment is denied as to Defendant's argument that Plaintiffs have failed to put forth evidence showing that Defendant excluded Mr. Borum from participation in, or otherwise denied Mr. Borum benefits, services, programs, or other activities for which Defendant was responsible.

**B. EVIDENCE THAT DEFENDANT'S
ACTIONS WERE MOTIVATED BY
DISCRIMINATORY ANIMUS OR ILL WILL**

To satisfy the third element of the prima facie case of discrimination under Title II of the ADA, a plaintiff must establish that the exclusion, denial of benefits, or discrimination was by reason of plaintiff's disability. *See Melton v. Dall. Area Rapid Transit*, 391 F.3d 669, 671–72 (5th Cir.2004). Courts have universally interpreted this element of an ADA claim to require a showing of intentional discrimination on the part of the defendant. *See, e.g., Delano–Pyle v. Victoria Cnty., Tex.*, 302 F.3d 567, 574 (5th Cir.2002); *Meagley v. City of Little Rock*, 639 F.3d 384, 390 (8th Cir.2011) (“[e]very circuit court to address the issue ... has reaffirmed that intentional discrimination must be shown to recover compensatory damages”).

Here, Defendant asserts that there is no evidence that Swisher County's actions were motivated by discriminatory animus or ill will. However, as this Court previously explained in its September 29, 2014 opinion denying Defendant's Motion to Dismiss, neither the Fifth Circuit nor any other circuit court requires a showing of animus or ill will in order to establish intentional discrimination under the ADA. A majority of circuits have held that intentional discrimination can be proved by showing that the defendant acted with deliberate indifference to the strong likelihood of a violation of the ADA or RA. *See, e.g., Loeffler v. Staten Island Univ. Hosp.*, 582 F.3d 268, 275 (2d Cir.2009); *A.G. v. Lower Merion*

Sch. Dist., 542 F. App'x 194, 198 (3d Cir.2013); *Meagley*, 639 F.3d at 389; *Duvall v. Cnty. of Kitsap*, 260 F.3d 1124, 1138 (9th Cir.2001); *Barber ex rel. Barber v. Colo. Dep't of Revenue*, 562 F.3d 1222, 1228–29 (10th Cir.2009); *Liese v. Indian River Cnty. Hosp. Dist.*, 701 F.3d 334, 345 (11th Cir.2012). Although the Fifth Circuit has explicitly declined to adopt this widely-accepted deliberate indifference standard for intentional discrimination under the ADA, it has also declined to establish a definition of intentional discrimination that would require a showing of animus or ill will. *See Delano–Pyle v. Victoria Cnty., Tex.*, 302 F.3d 567, 575 (5th Cir.2002); *Frame v. City of Arlington*, 657 F.3d 215, 231 n. 71 (5th Cir.2011). Thus, Plaintiffs are not required to produce evidence that Defendant's actions were motivated by discriminatory animus or ill will in order to satisfy the third element of the prima facie case of disability discrimination.

***8** Although Plaintiffs do not have to show discriminatory animus or ill will, they must still come forward with evidence at the summary judgment stage that creates a genuine issue of material fact as to whether Defendant intentionally discriminated against Mr. Borum. The Fifth Circuit has held that a defendant's failure to make reasonable accommodations to the needs of disabled persons can constitute intentional discrimination under the ADA and RA. *See Melton v. D all. Area Rapid Transit*, 391 F.3d 669, 672 (5th Cir.2004); *Garrett v. Thaler*, 560 F. App'x 375, 382 (5th Cir.2014) (holding that a prison's failure to provide reasonable accommodations to disabled inmates may constitute intentional discrimination sufficient to satisfy the second and third prongs of the Title II ADA inquiry); *see also Tennessee v. Lane*, 541 U.S. 509, 531, 124 S.Ct. 1978, 158 L.Ed.2d 820 (2004) (noting that Congress recognized “that failure to accommodate persons with disabilities will often have the same practical effect as outright exclusion”).

Here, Plaintiffs have introduced evidence sufficient to create a genuine issue of material fact as to whether Defendant failed to make reasonable accommodations for Mr. Borum—thus discriminating against him by reason of his disability under the third prong of the Title II ADA inquiry. Because a discussion of the evidence establishing Defendant's failure to make reasonable accommodations is presented in section (C), *infra*, the Court will not repeat that analysis here. Defendant's partial Motion for Summary Judgment is denied as to Defendant's argument that Plaintiffs have failed to put forth evidence showing that Defendant's actions were motivated by discriminatory animus or ill will.

C. EVIDENCE THAT DEFENDANT REFUSED TO PROVIDE MR. BORUM AN ACCOMMODATION

Under the “reasonable accommodation” theory of disability-based discrimination, Title II of the ADA imposes an affirmative obligation on public entities to make reasonable accommodations for disabled individuals who utilize their services or programs. *See Tennessee v. Lane*, 541 U.S. 509, 531–32, 124 S.Ct. 1978, 158 L.Ed.2d 820 (2004); *Bennett–Nelson v. La. Bd. of Regents*, 431 F.3d 448, 454 (5th Cir.2005). A public entity’s failure to abide by this reasonable accommodation obligation may constitute a denial of services and intentional discrimination sufficient to satisfy the second and third prongs of the prima facie case of discrimination under the ADA. *See Garrett v. Thaler*, 560 F. App’x 375, 382 (5th Cir.2014). This principle has been extended to ADA claims in the prison context, where the “failure to make reasonable accommodations to the needs of a disabled prisoner may have the effect of discriminating against that prisoner because the lack of an accommodation may cause the disabled prisoner to suffer more pain and punishment than non-disabled prisoners.” *McCoy v. Tex. Dep’t of Criminal Justice*, C.A. No. C–05–370, 2006 WL 2331055, at *7 (S.D.Tex. Aug.9, 2006). The reasonable accommodation obligation arises when the defendant (1) knows of the individual’s disability and (2) knows of the physical or mental limitations resulting from the disability. *See Seaman v. CSPH, Inc.*, 179 F.3d 297, 300 (5th Cir.1999). An accommodation is considered reasonable when it is sufficient to provide a disabled person “meaningful access to the benefit” offered by a public entity. *See Alexander v. Choate*, 469 U.S. 287, 301, 105 S.Ct. 712, 83 L.Ed.2d 661 (1985).

*9 Here, Defendant argues that “there is no evidence Swisher County failed or refused to provide Terry Borum an accommodation due to disability.” Defendant also argues that to survive summary judgment, Plaintiffs must “identify accommodations that were already available and not made for Terry Borum.” In support of this argument, Defendant cites *Douglas v. Gusman*, 567 F.Supp.2d 877, 889 (E.D.La.2008) and *Owens v. O’Dea*, No. 97–5517, 1998 WL 344063, at *3 (6th Cir. May 27, 1998).

In *Douglas*, the court adopted a report and recommendation from a magistrate judge, which held that Title II “does not ... create a right for a disabled inmate to demand that the prison implement a specific type of service, program, or activity that

is not already available.” *Douglas*, 567 F.Supp.2d at 889.¹ And in *Owens*, the Sixth Circuit held that Title II of the ADA requires “ ‘reasonable modifications’ to public services and programs that discriminate on the basis of disability.” *Owens*, 1998 WL 344063, at *3. Contrary to Defendant’s argument, these cases do not support the proposition that Plaintiffs must “identify accommodations that were already available” for other inmates. *Douglas* merely holds that the ADA does not require prisons to provide *new* services or programs for a disabled prisoner. *Douglas*, 567 F.Supp.2d at 889. But, as the Sixth Circuit made clear in *Owens*, public entities do have an affirmative obligation to make reasonable modifications or accommodations so that a disabled prisoner can have meaningful access to *existing* public services or programs. *Owens*, 1998 WL 344063, at *3; *Alexander v. Choate*, 469 U.S. 287, 301, 105 S.Ct. 712, 83 L.Ed.2d 661 (1985).

As discussed in section (A), *supra*, Plaintiffs have produced sufficient evidence to create a genuine issue of material fact as to whether Defendant refused to provide Mr. Borum with a reasonable “accommodation” or “modification” that would allow Mr. Borum to access two *existing* public services or programs: prison food services and prison medical care. **First**, Plaintiffs presented evidence that Defendant knew of Mr. Borum’s disability and the physical and mental limitations resulting from that disability. *See Seaman v. CSPH, Inc.*, 179 F.3d 297, 300 (5th Cir.1999). Deposition testimony indicates that jail officials were aware of Mr. Borum’s unique feeding requirements-including a feeding tube and special nutritional supplements. Jail officials were also aware that Mr. Borum was suffering from substantial medical problems during his detention-including severe alcohol withdrawal, DTs, and hallucinations. And Sheriff Grubb was aware that people suffering from alcohol withdrawal, like Mr. Borum, might “stumble and hurt themselves.” Grubb Dep. 113:23 (App.39).

Second, deposition testimony indicates that Defendant failed to provide Mr. Borum with a reasonable accommodation or modification that would give him meaningful access to food and medical care. *See Alexander*, 469 U.S. at 301. Defendant failed to provide Mr. Borum with the nutritional supplements required by his feeding tube and instead fed him nothing but honey and orange juice for three days. Defendant also failed to call a doctor, hospital, or otherwise provide medical care to Mr. Borum despite full awareness of Mr. Borum’s urgent need for medical attention.

*10 Viewing this evidence in the light most favorable to the Plaintiffs, a jury could find that Swisher County refused to provide Mr. Borum with a reasonable accommodation for his disabilities. Defendant's partial Motion for Summary Judgment is denied as to Defendant's argument that Plaintiffs have failed to put forth evidence showing that Defendant refused to provide Mr. Borum with a reasonable accommodation.

CONCLUSION

Defendant's *Partial No Evidence Motion for Summary Judgment* is DENIED.

IT IS SO ORDERED.

All Citations

Not Reported in F.Supp.3d, 2015 WL 327508, 51 NDLR P 80

Footnotes

- 1 The court in *Douglas* also held that "Title II does not require a prison to make reasonable accommodations for inmates with disabilities." *Douglas*, 567 F.Supp.2d at 889. However, the Fifth Circuit has clearly held that the ADA'S reasonable accommodation theory *does* apply in the prison context. See *Garrett v. Thaler*, 560 F. App'x 375, 382 (5th Cir.2014) ("Title II imposes an obligation on public entities to make reasonable accommodations or modifications for disabled persons, including prisoners"); see also *McCoy v. Tex. Dep't of Criminal Justice*, C.A. No. C-05-370, 2006 WL 2331055, at *7 (S.D.Tex. Aug.9, 2006).

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This case was not selected for publication in the Federal Reporter. Not for Publication in West's Federal Reporter.

See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also Fifth Circuit Rules 28.7, 47.5.3, 47.5.4. (Find CTA5 Rule 28 and Find CTA5 Rule 47) United States Court of Appeals, Fifth Circuit.

Cynthia CARDENAS, Individually, and as Next Friend for A.C. and N.C.; Andres Cardenas; Sabina Cardenas, Plaintiffs–Appellants

v.

LEE COUNTY, TEXAS, Defendant–Appellee.

No. 13–50631.

|

May 28, 2014.

Synopsis

Background: Wife of inmate who died from multiple drug toxicity brought § 1983 action against county, as well as state wrongful death claims. The United States District Court for the Western District of Texas granted summary judgment to county. Wife appealed.

Holdings: The Court of Appeals held that:

[1] wife failed to establish deliberate indifference claim based on a single episode;

[2] wife failed to establish that county had a policy of denying medical care to inmates, so as to support deliberate indifference claim;

[3] wife failed to establish that county provided inadequate training in how to deal with medical emergencies in violation of inmate's constitutional rights; and

[4] trial court's refusal to impose sanction for alleged discovery violation was not an abuse of discretion.

Affirmed.

Attorneys and Law Firms

*253 Lloyd H. Robles, Esq., Robles & Associates, Austin, TX, for Plaintiffs–Appellants.

Jason Eric Magee, Allison, Bass & Associates, L.L.P., Austin, TX, for Defendant–Appellee.

Appeal from the United States District Court for the Western District of Texas, USDC No. 1:12–CV–85.

Before JOLLY, GARZA, and HIGGINSON, Circuit Judges.

Opinion

PER CURIAM: *

Cynthia Cardenas appeals the district court's granting of summary judgment to the defendant, Lee County (the “County”), on Cardenas's 42 U.S.C. § 1983 and state wrongful death claims. Cardenas alleges that the County violated the constitutional rights of her deceased husband, Cesar Cardenas (“Cesar”), by either denying him medical care, maintaining a policy of denying medical care to inmates, or by failing to adequately train prison guards in the provision of emergency medical care. Cardenas also argues that the district court erred in granting summary judgment before the County had produced responsive documents. Because taking the evidence in the light most favorable to Cardenas, she cannot prove her claims, we *254 AFFIRM the judgment of the district court.

I.

Cesar was placed in the custody of the Lee County Sheriff's Office in November 2011. On December 3, he became ill and was transported to a nearby hospital, but was subsequently returned to the jail. Two days later, Cesar fell ill again. A prison officer took Cesar's blood pressure and pulse, and both were elevated. The officer also noted that Cesar was shaking. No further action was taken at that time, except that the incoming prison officers were told to keep an eye on Cesar's condition. At some point during the night, the prison officers were informed by Cesar's cellmates that Cesar had vomited a white substance into the cell toilet. The officials checked on Cesar again near midnight, but they were unable to wake Cesar and thus did not check his vital signs. Cesar was not checked on again until the next morning, around 6:00 a.m.,

when Cesar was found dead in his cell.¹ An autopsy revealed that Cesar had died of multiple drug toxicity.

Cardenas filed suit against the County on behalf of herself and her minor children. In the district court, Cardenas, in support of her claim that the County had a policy and practice of denying medical care to its prisoners, introduced the affidavit of another inmate, Michael Sanders. In his affidavit, Sanders indicated that he had been an inmate in the Lee County jail. During his time in custody, he became ill, and a prison officer summoned an ambulance to take Sanders to the hospital. When the ambulance arrived, Sanders states that Lee County Sheriff Rodney Meyer (“Sheriff Meyer”) turned it away because he believed that Sanders was faking his illness. Cardenas argues that these two incidents—the turning away of the ambulance for Sanders and the failure to summon medical care for Cesar—are evidence of a policy of denying medical care to inmates.

The district court granted summary judgment to the County. The district court held that, even taking Sanders's affidavit as completely true, these two incidents could not support Cardenas's claim of a County policy because they were isolated incidents as evidenced by both Sanders and Cesar receiving medical care during their time in the County jail. The district court held that the failure to get timely medical care in these cases was a failure in judgment as opposed to a policy of denying medical care. The district court also rejected Cardenas's failure-to-train theory. After recognizing that the County's medical care training was inadequate, the district court nonetheless held that under the high standard the Supreme Court has imposed for failure-to-train liability, Cardenas could not recover. The district court accordingly granted summary judgment to the County and entered final judgment in the County's favor.

Cardenas now appeals arguing that the district court was incorrect on the merits, and that the district court should not have granted summary judgment because the County had failed to produce records related to the Sanders incident despite Cardenas's request for their production.

II.

We review a grant of summary judgment de novo. *255 *Royal v. CCC & R Tres Arboles, L.L.C.*, 736 F.3d 396, 400 (5th Cir.2013). Summary judgment is improper if there is a genuine dispute of material fact such that a reasonable jury

could return a verdict for the nonmoving party. *Id.* At the summary judgment stage, we view the evidence in the light most favorable to the nonmoving party—Cardenas. *Id.*; see also *Tolan v. Cotton*, — U.S. —, 134 S.Ct. 1861, 1863, 188 L.Ed.2d 895 (2014) (per curiam) (“[Courts must] adhere to the axiom that in ruling on a motion for summary judgment, ‘the evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor.’”).

Cardenas attempts to demonstrate a § 1983 violation by the County in three alternative ways: (1) showing that prison officials were deliberately indifferent to Cesar's medical needs in this single individual case; (2) demonstrating that the County had a policy or custom of denying medical care to prisoners; or (3) demonstrating that the County's training for prison officials was inadequate. To establish liability for the County, Cardenas must satisfy the “high standard of proof” that this court requires for imposing liability on a municipality. *Snyder v. Trepagnier*, 142 F.3d 791, 796 (5th Cir.1998). We now turn to address whether Cardenas has satisfied this standard with respect to any of these theories.

A.

Cardenas first argues that the County was deliberately indifferent to Cesar's medical needs specifically on the night he died, and that the County directly, by this single incident, violated Cesar's constitutional rights. See *Thompson v. Upshur Cnty., Tex.*, 245 F.3d 447, 457 (5th Cir.2001) (“[P]retrial detainees have a constitutional right ... not to have their serious medical needs met with deliberate indifference on the part of the confining officials.”). To establish deliberate indifference against a County or other municipality based on a single episode, Cardenas must show that a prison officer was aware of facts from which an inference of substantial risk of harm could be drawn, the officer drew that inference, and the officer subjectively intended that harm occur. *Id.* at 458–59.

[1] Before the district court, Cardenas conceded that no prison officer had subjective knowledge of a substantial risk of harm to Cesar. Specifically, Cardenas “[did] not deny that a jail or detention official did not have subjective knowledge of the substantial risk of serious harm to [Cesar]....” Accordingly, Cardenas cannot establish deliberate indifference based on a single episode; the district court was correct to dismiss Cardenas's claims based on this theory.

B.

Cardenas next attempts to show that Cesar's death was a result of a County policy of denying medical care to inmates. This policy can be an (1) express policy of violating the Constitution, (2) a widespread practice or custom—even if that custom has not received formal approval by an official decision-making body—or (3) a decision by an individual with express policy-making authority. *Monell v. Dep't. of Social Services of N.Y.*, 436 U.S. 658, 690–91, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978); *Pembaur v. City of Cincinnati*, 475 U.S. 469, 481–83, 106 S.Ct. 1292, 89 L.Ed.2d 452 (1986). We now look at each of these possibilities.

1.

[2] It is immediately clear that Cardenas cannot establish that the County has an express policy of refusing medical care to inmates. Just the opposite is true. *256 The County policy is that “[e]mergency medical care is available twenty-four (24) hours a day.” If an emergency exists, the prisoner is to be transported to a local hospital via ambulance. Thus, Cardenas cannot establish that the County has an express policy of denying medical care to inmates.

2.

Cardenas next argues that, despite the express policy to the contrary, the County has a widespread custom amounting to a policy of denying medical care to inmates. *Monell*, 436 U.S. at 690–91, 98 S.Ct. 2018 (recognizing that a municipality may be liable for deprivations caused by a government custom “even though such a custom has not received formal approval through the body’s official decisionmaking channels”). For support, Cardenas points to the circumstances surrounding Cesar’s death, as well as the affidavit of Sanders.

In his affidavit, Sanders states that while he was in the custody of the County, he became ill. After one prison officer summoned an ambulance, Sheriff Meyer turned the ambulance away. As a result, Sanders was not taken to the hospital until the following day; he required emergency surgery and a lengthy hospital stay. Cardenas argues that this denial of timely medical care to Sanders, combined with the similar circumstances surrounding Cesar’s death—i.e. the failure to procure timely medical care for Cesar—indicate that

the County has a custom or policy of denying medical care to inmates.

[3] Even taking all of Cardenas’s claims as true, there is not sufficient evidence to demonstrate that the County had a custom of denying medical care. The undisputed facts indicate the opposite. Both Sanders and Cesar *did* receive medical care during their time in County custody. Sanders was taken to the hospital the day after the ambulance was turned away by Sheriff Meyer. Cesar was taken to the hospital several days prior to his death. Thus, in both cases, the prisoners received medical care. That they received it either too early or too late may indicate, as the district court suggested, a failure in judgment by the prison officials. These two isolated failures in judgment cannot, however, establish a custom or policy of denying medical care to inmates. *See, e.g., Arshad v. Congemi*, No. 08–30061, —Fed.Appx. —, —, 2009 WL 585633, *8 (5th Cir. Mar. 9, 2009) (unpublished) (dismissing *Monell* claim for failure to show a “custom” where plaintiffs “point to only one similar previous incident”).

3.

Cardenas next argues that Cesar’s constitutional deprivation was caused by the decision of an individual with express policy-making authority: Sheriff Meyer. *See Pembaur*, 475 U.S. at 481–83, 106 S.Ct. 1292. Cardenas to some extent conflates this theory with the custom or policy theory from above. Cardenas alleges that by turning the ambulance away in Sanders’s case, Sheriff Meyer created a policy or custom of denying medical care to inmates. As discussed above, the two isolated incidents are not enough to establish a policy or custom. Similarly, Cardenas’s argument on this theory fails because Cardenas does not allege that Sheriff Meyer himself had any part in the denial of medical care to Cesar.

[4] Here, taking Cardenas’s allegations as true, Sheriff Meyer made a decision in Sanders’s case to take a particular course of action. And although, under *Pembaur*, that could be interpreted as “an act of official government policy” in Sanders’s case, it does not support Cardenas’s claim because Sheriff Meyer was not involved in Cesar’s case. *See* *257 *Thompson*, 245 F.3d at 459 (recognizing that a sheriff “not personally involved in the acts that deprived the plaintiff of his constitutional rights” is liable under § 1983 only under a failure-to-train theory). Thus, Cardenas cannot establish that

Cesar's alleged constitutional injury was caused by an official with policy-making authority.

indifference on the part of the County. *Connick*, 131 S.Ct. at 1360.

C.

Finally, Cardenas argues that she can recover under § 1983 based on the County's inadequate training of prison officials. In short, Cardenas alleges that the County provided inadequate training in how to deal with medical emergencies, and this failure led to Cesar's death.

In determining municipal liability based on inadequate training, "the focus must be on adequacy of the training program in relation to the tasks the particular officers must perform." *City of Canton, Ohio v. Harris*, 489 U.S. 378, 390, 109 S.Ct. 1197, 103 L.Ed.2d 412 (1989). Establishing municipal liability for a failure to train is a difficult task. *See Connick v. Thompson*, — U.S. —, 131 S.Ct. 1350, 1359, 179 L.Ed.2d 417 (2011) ("A municipality's culpability for a deprivation of rights is at its most tenuous where a claim turns on a failure to train."). Cardenas must establish that the County's failure to train was deliberately indifferent to the constitutional rights of inmates. *Id.*

1.

Establishing deliberate indifference generally requires a showing that the municipality failed to change its training methods in the face of several incidents in which the training methods caused constitutional deprivations. *Cousin v. Small*, 325 F.3d 627, 637 (5th Cir.2003); *Connick*, 131 S.Ct. at 1360 ("A pattern of similar constitutional violations by untrained employees is 'ordinarily necessary' to demonstrate deliberate indifference for purposes of failures to train.").

[5] Here, Cardenas again relies on the cases of Cesar and Sanders and alleges that these two occurrences demonstrate the inadequacy of the County's training methods. Cardenas cannot clear the high bar that exists for establishing a failure to train by pointing only to these two claims. These claims undoubtedly represent a small proportion of the inmates that the County has held over the relevant time period. Additionally, these events are contrasted by the times that these exact two inmates did receive medical care while in County custody. Thus, these facts cannot establish the "pattern of similar constitutional violations by untrained employees" that is necessary to demonstrate deliberate

2.

It is also possible, in limited circumstances, to establish a failure-to-train claim based on a single incident. *See id.* at 1361 (recognizing that the Court has left open the possibility of failure-to-train liability based on a single incident when the unconstitutional consequences of the failure are "patently obvious"). In *Harris*, the Supreme Court provided an example of a training failure that would be "so obvious" to support liability based on a single incident:

For example, city policymakers know to a moral certainty that their police officers will be required to arrest fleeing felons. The city has armed its officers with firearms, in part to allow them to accomplish this task. Thus, the need to train officers in the constitutional limitations on the use of deadly force can be said to be "so obvious," that failure to do so could properly be characterized as *258 "deliberate indifference" to constitutional rights.

489 U.S. at 390 & n. 10, 109 S.Ct. 1197 (internal citation omitted). The Supreme Court has subsequently made clear that this language applies to a narrow set of cases. *Connick*, 131 S.Ct. at 1366 ("We conclude that this case does not fall within the narrow range of 'single-incident' liability....").

[6] The district court stated that the County's training "is inadequate by any reasonable measure." Although the County disputes this characterization, we see no need to pass judgment on the County's training program. Even assuming that the training is inadequate, a constitutional violation via inadequate training was not "so obvious" as to establish liability. Cardenas needed to demonstrate that, absent further training, it was "highly predictable" that prison officials would be "confounded" by decisions about whether to summon emergency medical care. *See id.* at 1365. Cardenas had to demonstrate that this was "so predictable that failing to train the [prison officials] amounted to *conscious disregard*" for a prisoner's right to medical care. *Id.* (emphasis in original). Cardenas did not satisfy this burden.

In sum, the Supreme Court has made clear that failure-to-train liability for municipalities is only appropriate in the most egregiously apparent cases. Even accepting that the district court was correct that the County's training was inadequate, this case does not fit within that narrow band of circumstances where a failure to train is so obvious as to result in liability.²

III.

[7] Finally, Cardenas argues that the district court erred in granting summary judgment to the County in the light of the County's failure to produce responsive documents related to Sanders's incarceration and affidavit. The district court rejected this request for production as well as Cardenas's motion for sanctions for spoliation of evidence. We review this decision on a discovery motion for abuse of discretion. *Turnage v. Gen. Elec. Co.*, 953 F.2d 206, 208 (5th Cir.1992).

[8] We hold that the district court did not abuse its discretion in refusing to sanction the County and in granting summary judgment despite Cardenas's discovery complaints. Cardenas has not shown that she was prejudiced by any failure to produce evidence. *See Marshall v. Norwood*, 741 F.2d 761, 764 (5th Cir.1984). At this stage in the proceedings, we take Sanders's affidavit as wholly true, so it is unclear what would be added to Cardenas's case by evidence that merely

affirms the affidavit. Thus, we cannot say that the district court abused its discretion in denying this discovery motion. *See Greer v. Bramhall*, 77 Fed.Appx. 254, 255 (5th Cir.2003) (unpublished) ("As Greer suffered no prejudice, Greer has not shown that the district court abused its discretion....").

IV.

In this opinion, we hold that Cardenas has not established that the County violated § 1983. Specifically, the evidence, taken in the light most favorable to Cardenas, does not create an issue of material fact as to whether the County was deliberately indifferent to Cesar's medical needs, whether Cesar's deprivation was a result of a County policy, or whether the deprivation resulted from inadequate *259 training. Similarly, the district court did not abuse its discretion in denying Cardenas's discovery motion presented in Cardenas's response to the County's motion for summary judgment. The judgment of the district court is therefore

AFFIRMED.

All Citations

569 Fed.Appx. 252

Footnotes

- * Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.
- 1 As noted by the district court, the County argues that the prison officials visually checked on Cesar throughout the night. Consistent with taking the facts in the light most favorable to Cardenas at the summary judgment stage, we ignore this argument.
- 2 Cardenas also brought a state law survivorship action. This allows for an individual's § 1983 claim to survive to his heirs. As we have held that there is no viable § 1983 claim, the district court was correct in dismissing the state law survivorship claim.

2006 WL 2331055

Only the Westlaw citation is currently available.

United States District Court,
S.D. Texas,
Corpus Christi Division.

L.J. McCOY and Antonio V. Thompson, Plaintiffs,
v.

TEXAS DEPARTMENT OF CRIMINAL
JUSTICE, et al, Defendants.

C.A. No. C-05-370.

|
Aug. 9, 2006.

Attorneys and Law Firms

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Kim J. Coogan, Lindsay Ayres Todd, Office of the Atty. Gen. of Texas, Capitol Station, Craig H. Russell, Assistant Atty. Gen., General Litigation Div., Capitol Station, Austin, TX, for Defendants.

ORDER DENYING PLAINTIFFS' AND DEFENDANT'S CROSS-MOTIONS FOR SUMMARY JUDGMENT

JANIS GRAHAM JACK, District Judge.

*1 On this day came on to be considered Defendant Texas Department of Criminal Justice's "Motion for Summary Judgment on Plaintiffs' Americans with Disabilities Act and Rehabilitation Act Claims" (D.E. 47), and Plaintiffs' "Motion for Partial Summary Judgment Against TDCJ on ADA and Rehabilitation Act Claims" (D.E.88, 90). For the reasons discussed below, the Court DENIES both Plaintiffs' and Defendant's motions for summary judgment.

I. JURISDICTION

The Court has federal question jurisdiction over this lawsuit pursuant to 28 U.S.C. § 1331.

II. BACKGROUND

On July 27, 2005, Plaintiffs L.J. McCoy and Antonio Thompson (collectively "Plaintiffs") filed suit in this Court

against the Texas Department of Criminal Justice ("TDCJ"), TDCJ's executive director Brad Livingston, and several individual TDCJ officers and employees. (D.E.1, 8, 17, 31.) Plaintiffs sued on behalf of Micah Burrell, deceased, alleging that Defendants caused Burrell's death and violated his rights under the Eighth Amendment, the Americans with Disabilities Act, § 504 of the Rehabilitation Act, and Chapter 121 of the Texas Human Resources Code.¹ (Pls.' Sec. Am. Compl. ("SAC") at ¶¶ 1-9.) On April 14, 2006, TDCJ filed a Motion for Summary Judgment on Plaintiffs' ADA and Rehabilitation Act claims (D.E.47), to which Plaintiffs filed a response (D.E.64). On July 14, 2006, Plaintiffs filed a Motion for Partial Summary Judgment against TDCJ on these same claims. (D.E.88, 90.) The following facts are not in dispute:

In August 2004, Micah Burrell ("Burrell") was a prisoner in the custody of Defendant TDCJ and incarcerated in "Administrative Segregation" at the McConnell Unit in Beeville, Texas. (Pls.' Ex. ("PE") 1 at ¶ 5; Q at 1.)² Burrell suffered from asthma and, on August 1, 2004, he experienced an asthma attack in his cell. (See PE H at 1; M at ¶¶ 2-3; Def.'s Ex. ("DE1") D at 1-3.)³ Several inmates in neighboring cells began to yell to the prison guards for help. (PE M at ¶¶ 3-4; O at ¶ 3.) Officer Juan Benavides eventually arrived at Burrell's cell and Burrell informed him that he was having an asthma attack. (PE 14 at 20; M at ¶ 4; O at ¶ 4.) Officer Benavides then instructed other guards to call for a supervisor. (PE 14 at 22; 15 at 1.) At some point, medical help was also summoned. (See PE 15 at 1.) By the time Lt. Annmarie De La Rosa and Nurse Rhonda Cubbage arrived at the cell, Burrell was lying on his bunk and not responding to verbal calls from the officers. (See PE P at 1-2; Q at 1-2; DE2 C at 39-41; D at 54.) Upon opening the cell door, the officers restrained Burrell and transported him to the prison medical center by stretcher. (PE Q at 1.) At the prison medical center, Burrell was not breathing and did not have a pulse. (PE Q at 1; R.) An ambulance was called and transported Burrell to Christus Spohn Hospital in Bee County, Texas, where he was pronounced dead. (PE Q at 1-2; R.) An autopsy conducted by Pathologist Gerald A. Campbell concluded that "the immediate cause of death ... [was] respiratory failure secondary to a combination of asthmatic episode and aspiration of gastric material." (PE Q at 3.)

III. DISCUSSION

A. Summary Judgment Standard

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*2 Federal Rule of Civil Procedure 56 states that summary judgment is appropriate if the “pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact.” Fed.R.Civ.P. 56(c). The substantive law identifies which facts are material. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *see also Ellison v. Software Spectrum, Inc.*, 85 F.3d 187, 189 (5th Cir.1996). A dispute about a material fact is genuine only “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Anderson*, 477 U.S. at 248; *Judwin Props., Inc. v. U.S. Fire Ins. Co.*, 973 F.2d 432, 435 (5th Cir.1992).

The “party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of [the record] which it believes demonstrate the absence of a genuine issue of material fact.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *Wallace v. Texas Tech. Univ.*, 80 F.3d 1042, 1046-47 (5th Cir.1996). If the movant bears the burden of proof on a claim or defense on which she is moving for summary judgment, she must come forward with evidence that establishes “beyond peradventure all the essential elements of the claim or defense to warrant judgment in [her] favor.” *See, e.g., Fontenot v. UpJohn Co.*, 780 F.2d 1190, 1194 (5th Cir.1986) (emphasis in original). If, however, the nonmovant bears the burden of proof on a claim, the moving party may discharge her burden by showing that there is an absence of evidence to support the nonmovant's case. *Celotex Corp.*, 477 U.S. at 325; *see also Ocean Energy II, Inc. v. Alexander & Alexander, Inc.*, 868 F.2d 740, 747 (5th Cir.1989).

Once the moving party has carried her burden, the nonmovant “may not rest upon the mere allegations or denials of [her] pleading, but ... must set forth specific facts showing that there is a genuine issue for trial.” *First Nat'l Bank of Arizona v. Cities Service Co.*, 391 U.S. 253, 270 (1968); *see also Schaefer v. Gulf Coast Reg'l Blood Ctr.*, 10 F.3d 327, 330 (5th Cir.1994) (stating that nonmoving party must “produce affirmative and specific facts” demonstrating a genuine issue). The nonmovant's burden is not satisfied by conclusory allegations, unsubstantiated assertions, or some metaphysical doubt as to the material facts. *Willis v. Roche Biomedical Labs., Inc.*, 61 F.3d 313, 315 (5th Cir.1995); *see also Brown v. Houston*, 337 F.3d 539, 541 (5th Cir.2003) (stating that “improbable inferences and unsupported speculation are not sufficient to [avoid] summary judgment”). Similarly, the “mere existence of a scintilla of evidence in support of

the [nonmovant's] position will be insufficient to preclude summary judgment; there must be evidence on which the jury could reasonably find for [that party].” *Doe on Behalf of Doe v. Dallas Indep. Sch. Dist.*, 153 F.3d 211, 215 (5th Cir.1998) (internal quotes omitted).

*3 When the parties have submitted evidence of conflicting facts, however, “the evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor.” *Willis*, 61 F.3d at 315. Summary judgment is not appropriate unless, viewing the evidence in the light most favorable to the nonmoving party, no reasonable jury could return a verdict for that party. *See, e.g., Rubinstein v. Adm'rs of the Tulane Educ. Fund*, 218 F.3d 392, 399 (5th Cir.2000). “That the movant appears more likely to prevail at trial is no reason to grant summary judgment; it is not the province of the court on a motion for summary judgment to weigh the evidence, assess its probative value, or decide factual issues.” *Byrd v. Roadway Exp., Inc.*, 687 F.2d 85, 87 (5th Cir.1982); *Aubrey v. Sch. Bd. of Lafayette*, 92 F.3d 316, 318 (5th Cir.1996). If, however, the nonmovant's “evidence is merely colorable, or is not sufficiently probative, summary judgment may be granted.” *Anderson*, 477 U.S. at 249-50.

B. Defendant TDCJ's Motion for Summary Judgment

According to TDCJ, its motion for summary judgment raises only three discrete issues for consideration by this Court. (Def.'s Reply (“Reply”) at 2.) First, TDCJ claims that it is entitled to immunity from Plaintiffs' claims under § 504 of the Rehabilitation Act (“RA”) and Title II of the Americans with Disabilities Act (“ADA”). (*Id.*; Def.'s Mot. for Sum. Judg. (“DMSJ”) at 4-6, 10-13.) Second, TDCJ claims that Plaintiffs do not have “standing” to assert Burrell's rights under the ADA and RA. (DMSJ at 3.) Finally, TDCJ argues that Plaintiffs' claims under the ADA and RA cannot succeed because Burrell did not “request an accommodation” for his disability from TDCJ. (Reply at 2; DMSJ at 8-10.) The Court will discuss each of TDCJ's three arguments in turn.

1. Sovereign Immunity

Defendant TDCJ claims that summary judgment is appropriate in this case because its “Eleventh Amendment immunity has not been abrogated.” (DMSJ at 2.) The doctrine of sovereign immunity “bars an individual from suing a state in federal court unless the state consents to suit or Congress has clearly and validly abrogated the state's sovereign immunity.” *See, e.g., Perez v. Region 20 Educ. Serv. Ctr.*, 307 F.3d 318, 326 (5th Cir.2002); *Kimel v.*

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Florida Bd. of Regents, 528 U.S. 62, 72-73 (2000) (stating that “for over a century now, we have made clear that the Constitution does not provide for federal jurisdiction over suits against nonconsenting States”); *Bd. of Trustees of Univ. of Alabama v. Garrett*, 531 U.S. 356, 363 (2001) (stating that “[t]he ultimate guarantee of the Eleventh Amendment is that nonconsenting States may not be sued by private individuals in federal court”). Congress, however, has the power to “single-handedly strip the states of their Eleventh Amendment immunity and thereby authorize federal court suits by individuals against the states.” *Pace v. Bogalusa City School Bd.*, 403 F.3d 272, 277 (5th Cir.2005). “When Congress does this, it is exercising its power to abrogate Eleventh Amendment immunity.” *Id.* In addition to Congress’ power to abrogate immunity, a state can also be sued if it has “waive[d] its Eleventh Amendment protection and allow[ed] a federal court to hear and decide a case” by consent. *See Idaho v. Coeur d’Alene Tribe of Idaho*, 521 U.S. 261, 267 (1997). In this case, it is undisputed that TDCJ is an arm of the State of Texas and can assert sovereign immunity as a defense from suit. *Sherwinski v. Peterson*, 98 F.3d 849, 851 (5th Cir.1996). Therefore, the only remaining question is whether Congress has abrogated TDCJ’s immunity, or whether TDCJ has consented to suit under the ADA and RA.

a. Rehabilitation Act Claim

*4 With respect to Plaintiffs’ claim under the RA, it is clear that TDCJ is not entitled to sovereign immunity. As this Court noted in a previous order (D.E.23), § 504 of the RA prohibits discrimination against qualified individuals with disabilities by recipients of federal financial assistance. 29 U.S.C. § 794 *et seq.* Pursuant to 42 U.S.C. § 2000d-7, States and public entities receiving federal financial assistance *specifically waive* their Eleventh Amendment immunity from claims under § 504 of the RA:

A State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation of section 504 of the Rehabilitation Act of 1973 ... or the provisions of any other Federal statute prohibiting discrimination by recipients of Federal financial assistance.

Id. at (a)(1). That is, a state, or state agency, consents to be sued under the RA when it accepts federal funds. *See Miller v. Texas Tech Univ. Health Scis. Ctr.*, 421 F.3d 342

(5th Cir.2005) (en banc); *Bennett-Nelson v. Louisiana Bd. of Regents*, 431 F.3d 448, 453 (5th Cir.2005) (finding that a state entity’s “receipt of federal education funds constituted a knowing and voluntary waiver of sovereign immunity as to claims under § 504 [of the RA]”); *Pace*, 403 F.3d at 282 (5th Cir.2005) (en banc) (stating that § 2000d-7 “clearly, unambiguously, and unequivocally conditions receipt of federal funds ... on the State’s waiver of Eleventh Amendment Immunity”); *Thomas v. Univ. of Houston*, 2005 WL 2902207 (5th Cir. Nov. 4, 2005) (unpublished); *Espinoza v. Texas Dept. of Public Safety*, 2005 WL 2044547 (5th Cir. Aug., 25, 2005) (unpublished). In this case, Plaintiff has provided the Court with evidence that TDCJ is a recipient of federal financial assistance, and TDCJ does not dispute this fact in its Motion for Summary Judgment. (PE 1 at ¶ 9; SAC at ¶ 20; *see also* DMSJ at 3-6.) Therefore, TDCJ is not entitled to immunity on Plaintiffs’ Rehabilitation Act claim.

b. Americans With Disabilities Act Claim

Although TDCJ does not contest that it has waived its immunity from Plaintiffs’ RA claim, TDCJ does maintain that it is entitled to immunity on Plaintiffs’ claim under Title II of the ADA. Plaintiffs, on the other hand, argue that summary judgment is inappropriate on this ground because Congress has abrogated TDCJ’s immunity from claims under the ADA. (Pls.’ Resp. at 10.)

In this case, however, it is unnecessary to decide whether TDCJ is entitled to immunity from Plaintiff’s ADA claim because the Fifth Circuit has held that Plaintiffs’ ADA claim is identical to, and duplicative of, their RA claim. *See Bennett-Nelson v. Louisiana Bd. of Regents*, 431 F.3d 448, 455 (5th Cir.2005). In *Bennet-Nelson*, the Fifth Circuit addressed a case where, as here, several plaintiffs brought claims under both the RA and ADA, alleging that the defendant, a university, had failed to provide them “reasonable accommodations” as required by the two Acts. *Id.* at 450, 455. After determining that the defendant had “waived its immunity from suit under § 504 of the Rehabilitation Act by accepting federal funding,” the *Bennet-Nelson* court turned to the question of whether Congress had validly abrogated defendant’s immunity under the ADA. *Id.* at 449, 453-54. The court concluded that “[b]ecause Louisiana has waived its sovereign immunity from actions under § 504 of the Rehabilitation Act, we need not address that question today.” *Id.* at 454. The court explained that “the rights and remedies afforded plaintiffs under Title II of the ADA are almost entirely duplicative of those provided under § 504 of the Rehabilitation Act.” *Id.*; *see also Pace*, 403 F.3d at 287;

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Hainze v. Richards, 207 F.3d 795, 799 (5th Cir.2000) (stating that the “language of Title II generally tracks the language of Section 504 ... and Congress’ intent was that Title II ... work in the same manner as Section 504”); *see also* 42 U.S.C. § 12133 (stating that the “remedies, procedures, and rights” of Title II of the ADA are the same as those set forth in the Rehabilitation Act).

*5 As the *Bennett-Nelson* court noted, “[t]he only material difference between the two [statutes] lies in their respective causation requirements.” *Bennett-Nelson*, 431 F.3d at 454. The court held, however, that this difference between the statutes is “immaterial” where the plaintiff’s claim is based on the defendant’s alleged-failure “to make reasonable accommodations for disabled individuals” because “[w]here a defendant fails to meet this affirmative obligation, the cause of that failure is irrelevant.” *Id.* at 454-55. The court elaborated:

In the instant case, there is no question that the complaint claims the University’s failure to provide the demanded accommodations is the sole cause of the alleged denial of benefits to the plaintiffs. That is to say, the plaintiffs claim that they were excluded from participation in their classes precisely to the extent that they were not accommodated with interpreters or note takers. The question here is not whether or to what extent the plaintiffs suffer a disability under the ADA; nor is the question whether the denial of the accommodation to that disability was caused solely or only in part by the animus of the defendants. The question is whether the failure to accommodate the disability violates the ADA; and the existence of a violation depends on whether, under both the Rehabilitation Act and the ADA, the demanded accommodation is in fact reasonable and therefore required. If the accommodation is required the defendants are liable simply by denying it. In short, causation is not the issue in the appeal presented today.

Id. at 455. Therefore, the *Bennett-Nelson* court concluded that, “having already held that sovereign immunity does not bar the appellants’ claim under § 504, we need not address at this juncture the issue of abrogation under Title II of the ADA, because the rights and remedies under either are the same for purposes of this case.” *Id.*

The holding of *Bennett-Nelson* applies with equal force to the instant case. As in *Bennett-Nelson*, Plaintiffs here are alleging that TDCJ violated the ADA and RA solely by “refus[ing] to reasonably accommodate Mr. Burrell’s disability” in a number of ways. (SAC at ¶¶ 23-25; Pls.’ Mot. Sum. Judg. (“PMSJ”) at 1-2.) Where a claim is based on the failure to provide reasonable accommodations, the ADA and RA are identical in scope. Therefore, the question of whether Congress has abrogated TDCJ’s immunity from Plaintiffs’ ADA claim is moot. Accordingly, Defendant TDCJ’s motion for summary judgment based on immunity is DENIED.

2. Standing

Defendant TDCJ claims that summary judgment is also appropriate because Plaintiffs L.J. McCoy and Antonio Thompson do not have “standing” to bring this action for the alleged-violation of Burrell’s rights under the ADA and RA. (DMSJ at 3; *see also* D.E. 77.)⁴ In support of its argument, TDCJ cites 42 U.S.C. § 1988, which incorporates state law “to fill the gaps in administration of civil rights suits” so long as state law is “not inconsistent with the Constitution and laws of the United States.” *See Pluet v. Frasier*, 355 F.3d 381, 383 (5th Cir.2004); 42 U.S.C. § 1988(a). If 42 U.S.C. § 1988 applies, then “a party must have standing under the [Texas] state wrongful death or survival statutes” in order to bring a claim asserting the rights of a deceased person. *See Pluet*, 355 F.3d at 383-84; *see also Rhyne v. Henderson County*, 973 F.2d 386, 390-91 (5th Cir.1992) (finding that standing under Texas wrongful death and survival statutes is incorporated into the Federal Civil Rights Statutes). TDCJ contends that neither L.J. McCoy (Burrell’s grandmother) or Antonio Thompson (Burrell’s brother) are entitled to bring a claim regarding Burrell’s death under the Texas survival or wrongful death statutes and, therefore, this action must be dismissed for lack of standing. *See* Tex. Civ. Prac. & Rem.Code § 71.004(a) (limiting wrongful death actions to the “surviving spouse, children, and parents of the deceased”); Tex. Civ. Prac. & Rem.Code § 71.021 (stating that a survival cause of action exists only “in favor of the heirs, legal representatives, and estate of the [deceased] person”).

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*6 TDCJ's standing argument is unpersuasive, however, because the issue of "standing" under the ADA and RA is not governed by the terms of § 1988 or Texas law. Although § 1988 incorporates state law on the issue of standing for suits under 42 U.S.C. §§ 1981 and 1983, *see Pluet*, 355 F.3d at 383, the Fifth Circuit has never applied § 1988 to impose state law standing requirements to suits under the ADA and RA. Rather, courts have held that the ADA and RA contain their own, much broader, standing provisions:

§ 12133, [the] ADA's public entity enforcement provision, states that the statute extends its remedies to *any person* alleging discrimination on the basis of disability. Similarly, the Rehabilitation Act protects any person aggrieved by the discrimination of a person on the basis of his or her disability.... [S]uch broad language in the enforcement provisions of the statutes evinces a congressional intention to define standing to bring a private action as broadly as is permitted by Article III of the Constitution.

MX Group, Inc. v. City of Covington, 293 F.3d 326, 334 (6th Cir.2002) (emphasis supplied) (citations and internal quotes omitted) (citing *Innovative Health Sys., Inc. v. City of White Plains*, 117 F.3d 37, 43 (2d Cir.1997)); *see also Liberty Res., Inc. v. Se. Pennsylvania Transp. Auth.*, 155 F.Supp.2d 242, 249 (E.D.Pa.2001) ("[T]he enforcement provision of the ADA ... broadly refers to any person, not solely [the] disabled individual []"). In defining standing as broadly as permitted by the Constitution, the statutes thus eliminate any prudential barriers to standing and allow plaintiffs to assert the rights of third-parties, such as Burrell, regardless of whether the plaintiffs meet the requirements of the Texas survival and wrongful death statutes. *See MX Group*, 293 F.3d at 332-35; *Clark v. McDonald's Corp.*, 213 F.R.D. 198, 209 (D.N.J.2003) (stating that the statutory language "evinces a congressional intention to define standing to bring a private action as broadly as is permitted by Article III of the Constitution, thus removing prudential barriers to standing"); *Ass'n of Cmty Orgs. for Reform Now v. Fowler*, 178 F.3d 350, 363 (5th Cir.1999) (stating that Congress "can modify or even abrogate prudential standing requirements" such as the general bar on plaintiffs asserting "the legal rights and interests of third parties"). Because the ADA and RA contain these broad standing provisions, § 1988's residual

incorporation of state law does not apply, and TDCJ's motion for summary judgment based on standing is DENIED.⁵

3. Duties Under the Rehabilitation Act and ADA

Defendant TDCJ's final argument in support of summary judgment is that it cannot be held liable under the ADA or RA because Burrell did not "request an accommodation" for his alleged-disability. (*See DMSJ* at 8-10; *Reply* at 2-3.) In particular, TDCJ argues that, under the statutes, "[p]rison officials need not anticipate an inmate's unarticulated need for [an] accommodation or ... offer an accommodation sua sponte; the inmate must provide evidence of his disability and the severity of the physical limitations resulting from it, and he must request an accommodation." (*DMSJ* at 9.) Plaintiffs, on the other hand, argue that the ADA and RA do not require a specific request for an accommodation and, in any case, Burrell did request accommodations from TDCJ. (*Pls.' Resp.* at 8-10.)

*7 The ADA and RA provide that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132; *see also* 29 U.S.C. § 794(a). Disability "discrimination" under the statutes, however, "differs from discrimination in the constitutional sense" because the ADA and RA statutes contain their own definitions of discrimination. *Melton v. Dallas Area Rapid Transit*, 391 F.3d 669, 672 (5th Cir.2004). For example, discrimination may include a defendant's failure to make reasonable accommodations to the needs of a disabled person. *See Id.* (under Title II of the ADA "public entities generally are required ... to make reasonable modifications to avoid discrimination on the basis of disability"); *see also Tennessee v. Lane*, 541 U.S. 509, 531 (2004) (Congress recognized "that failure to accommodate persons with disabilities will often have the same practical effect as outright exclusion" or discrimination); *Henrietta D. v. Bloomberg*, 331 F.3d 261, 273 (2d Cir.2003) (discussing claims of discrimination based on failure to make a "reasonable accommodation"); *Swenson v. Lincoln County School Dist. No. 2*, 260 F.Supp.2d 1136, 1144 (D.Wyo.2003) (stating that the "[t]hree theories of discrimination" under the statutes are "(1) intentional discrimination; (2) discriminatory impact; and (3) a refusal to make a reasonable modification"). In the prison context, for example, failure to make reasonable accommodations to the needs of a disabled prisoner may have the effect of

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discriminating against that prisoner because the lack of an accommodation may cause the disabled prisoner to suffer more pain and punishment than non-disabled prisoners.⁶ See *United States v. Georgia*, 546 U.S. 151, 126 S.Ct. 877, 880-81 (2006) (allegations, if true, that defendant refused to provide reasonable accommodations to a paraplegic inmate, “in such fundamentals as mobility, hygiene, medical care,” resulted in the disabled inmate suffering serious punishment “without penal justification”).

Defendant TDCJ is correct, however, that the accommodation provisions of the ADA and RA do not require public entities to “guess” an individual's need for an accommodation. See, e.g., *Randolph v. Rodgers*, 170 F.3d 850, 858 (8th Cir.1999); *Lawrence v. National Westminster Bank New Jersey*, 98 F.3d 61, 69 (3d Cir.1996) (stating that a defendant is not “expected to accommodate disabilities of which it is unaware”); *Hedberg v. Indiana Bell Telephone Co., Inc.*, 47 F.3d 928, 934 (7th Cir.1995) (stating that the “ADA does not require clairvoyance”). Rather, the general rule in cases under the RA, and both Titles I and II of the ADA, is that a plaintiff must show “that the [defendant] knew not only of the [individual's] disability, but also of the physical or mental limitations resulting therefrom.” See *Seaman v. CPSH, Inc.*, 179 F.3d 297, 300 (5th Cir.1999); *Gammage v. West Jasper School Bd.*, 179 F.3d 952, 954 (5th Cir.1999). “Because an [individual's] disability and concomitant need for accommodation are often not known to the [defendant] until the [individual] requests an accommodation, the ADA's reasonable accommodation requirement usually does not apply unless triggered by a request from the [individual].” *Reed v. LePage Bakeries, Inc.*, 244 F.3d 254, 261 (1st Cir.2001) (emphasis supplied). A disabled person's failure to expressly “request” an accommodation, however, is not fatal to an ADA claim where the defendant otherwise had knowledge of an individual's disability and needs, but took no action. See, e.g., *Id.* at 261 n. 7 (noting that a request for accommodation may not be required, for example, where the disabled individual's needs are “obvious”); *Chisolm v. McManimon*, 275 F.3d 315, 330 (3d Cir.2001) (reversing a district court's holding that a request for accommodation was necessary, where the public entity “had knowledge of [plaintiff's] hearing disability but failed to discuss related issues with him”) (citing *Randolph*, 170 F.3d at 858-59); *Taylor v. Principal Financial Group, Inc.*, 93 F.3d 155, 165 (5th Cir.1996) (noting that the disabled individual's burden to request an accommodation applies “[w]here the disability, resulting limitations, and necessary reasonable accommodations, are not open, obvious, and apparent”);

Felix v. New York City Transit Authority, 154 F.Supp.2d 640, 657 (S.D.N.Y.2001) (the general requirement of a request “is rooted in common sense. Obviously, an employer who acts or fails to act without knowledge of a disability cannot be said to have discriminated based on that disability ... [but this] concern[is] not relevant when an employer has independent knowledge of an [individual's] disability. The rule requiring a request for accommodation can be ignored in such circumstances”); *Walsted v. Woodbury County*, 113 F.Supp.2d 1318, 1336 (N.D.Iowa 2000) (“if an [individual's] disability and the need to accommodate it are obvious, [the individual] is not required to expressly request reasonable accommodation”); *Campbell v. Wal-Mart Stores, Inc.*, 272 F.Supp.2d 1276, 1289 (N.D. Okla.2003) (same); *Rosso v. PI Management Associates, L.L.C.*, 2005 WL 3535060 at *11 (S.D.N.Y. Dec. 23, 2005) (unpublished) (the requirement of a request “may be waived where the plaintiff's disability is obvious or otherwise known to the [defendant] without notice from the [plaintiff]”).

*8 In this case, Burrell was not necessarily required to request an accommodation because Plaintiffs have evidence tending to show that TDCJ was on notice of Burrell's alleged disability and that Burrell's need for an accommodation was obvious. For example, Plaintiffs have evidence that TDCJ and its officials were aware of Burrell's asthmatic condition. (PE 3 at 1; see also DE1 A; PE A; B; H.) Courts have held that “[i]t is common knowledge that a respiratory ailment, such as asthma, can be serious and life-threatening.” See, e.g., *Whitley v. Westchester County*, 1997 WL 659100 at *4 (S.D.N.Y. Oct. 22, 1997) (unpublished) (quoting *Garvin v. Armstrong*, 1998 WL 547117 at *2 (N.D.Ill. Aug. 20, 1998) (unpublished)); see also *Board v. Farnham*, 394 F.3d 469, 484 (7th Cir.2005) (“asthma can be, and frequently is, a serious medical condition, depending on the severity of the attacks”); *Felton v. Godinez*, 1996 WL 137645 at *4 (N.D.Ill. Mar. 25, 1996) (unpublished) (“Attacks of asthma ... are rarely fatal, but they can possibly result in serious injury or death”); *Ware v. Fairman*, 884 F.Supp. 1201, 1206 (N.D.Ill.1995) (stating that “asthma is a serious illness which requires an inhaler”). Plaintiffs also have evidence tending to show that TDCJ knew that Burrell had been prescribed asthma medications and that he required two different types of inhalers to control his asthma. (PE 3 at 1; 4 at 1; 5 at 1-2; 27 at ¶¶ 10, 12-13; see also DE1 A.) Finally, Plaintiffs have evidence that TDCJ and its officers knew that the conditions of administrative segregation might pose risks to asthmatic inmates because prison officials had received complaints from Burrell and other inmates that the

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administrative segregation unit was excessively hot and had poor ventilation. (PE 1 at ¶ 6; 7 at 1-2; M at ¶ 15.) In fact, there is evidence that Burrell himself advised TDCJ officers that he was having trouble breathing while housed in administrative segregation. (PE M at ¶ 15.) Burrell also complained of suffering at least one asthma attack, and was observed wheezing, in the month before his death. (DE1 A.) Viewing this evidence in the light most favorable to the Plaintiffs, a jury could find that TDCJ had sufficient knowledge of Burrell's disability, and the dangers posed by housing him in the administrative segregation unit, that it was required to take steps to accommodate him regardless of whether Burrell expressly requested a specific accommodation.

Furthermore, even if TDCJ is correct that Burrell was required to request an accommodation in order to invoke the ADA and RA, it still is not entitled to summary judgment. Plaintiffs have some evidence from which a jury could find that Burrell *did* in fact request certain accommodations from TDCJ and its officials. For example, on July 23, 2004, nine days before Burrell's death, prison officials noted that he had "requested [an] asthma inhaler."⁷ (PE D; Q at 2; DE1 D at 2.) Similarly, Plaintiffs have evidence that, on July 25, 2005, seven days before Burrell's death, he "told [Capt. Ambriz] that he was having trouble breathing because of his asthma. Capt. Ambriz told Mr. Burrell that he would go try to improve the ventilation." (PE M at ¶ 15.) Finally, a reasonable jury could also find that Burrell "requested" immediate medical attention or immediate transportation to a medical facility when, on the day of his death, he informed prison guards that he was having an asthma attack. (PE 14 at 20, 39; M at ¶¶ 3-4.) Viewing this evidence in the light most favorable to the Plaintiff, a jury could find that Burrell requested certain accommodations for his disability from TDCJ. Therefore, TDCJ's motion for summary judgment on Plaintiffs' ADA and RA claims is DENIED.

C. Plaintiffs' Motion for Summary Judgment

*9 In their motion for partial summary judgment, Plaintiffs claim that there is no genuine issue of material fact regarding Defendant TDCJ's liability under the RA and ADA. (PMSJ at 1.) Because Plaintiffs are moving for summary judgment on claims for which they bear the burden of proof, they must establish "beyond peradventure" every element of their claims in order for summary judgment in their favor to be appropriate. *See Fontenot*, 780 F.2d at 1194. In other words, a plaintiff "cannot attain summary judgment unless the evidence that [she] provides on [her claims] is *conclusive*."

Torres Vargas v. Santiago Cummings, 149 F.3d 29, 35 (1st Cir.1998) (emphasis supplied). A plaintiff's "showing must be sufficient for the court to hold that no reasonable trier of fact could find other than for the [plaintiff]," otherwise summary judgment cannot be granted. *Calderone v. United States*, 799 F.2d 254, 259 (6th Cir.1986). Plaintiffs have not met this heavy burden in this case, however, because the Court finds that they have not *conclusively* established that TDCJ failed to provide Burrell with "reasonable accommodations."⁸

Assuming, without deciding, that Plaintiffs could conclusively establish all the other elements of their ADA and RA claims, they still must prove that TDCJ failed to provide Burrell with reasonable accommodations. Whether an accommodation is "reasonable" requires a balancing of all the relevant facts, including: (1) the size, facilities, and resources of the defendant, (2) the nature and cost of an accommodation, (3) the extent to which the accommodation is effective in overcoming the effects of the disability, and (4) whether the accommodation would require a fundamental alteration in the nature of the defendant's program. *See, e.g.*, 45 C.F.R. § 84.12(c)(1-3); *School Bd. of Nassau County v. Arline*, 480 U.S. 273, 288 n. 17 (1987); *Nathanson v. Medical College of Pennsylvania*, 926 F.2d 1368, 1386 (3d Cir.1991). As such, the reasonableness of an accommodation is generally a question of fact inappropriate for resolution on summary judgment. *See, e.g.*, *Buskirk v. Apollo Metals*, 307 F.3d 160, 170-71 (3d Cir.2002) ("Generally, the question of whether a proposed accommodation is reasonable is a question of fact"); *Chisolm*, 275 F.3d at 327 ("[g]enerally, the effectiveness of auxiliary aids and/or services is a question of fact precluding summary judgment"); *Kennedy v. Dresser Rand Co.*, 193 F.3d 120, 122 (2d Cir.1999) ("the question of whether a proposed accommodation is reasonable is fact-specific and must be evaluated on a case-by-case basis"); *Oconomowoc Residential Programs v. City of Milwaukee*, 300 F.3d 775, 784 (7th Cir.2002) ("Whether a requested accommodation is reasonable or not is a highly fact-specific inquiry and requires balancing the needs of the parties"); *Niece v. Fitzner*, 922 F.Supp. 1208, 1218 (E.D. Mich.1996) (the "reasonableness of an accommodation under the ADA is a question of fact appropriate for resolution by the trier of fact"); *EEOC v. Dresser-Rand Co.*, 2006 WL 1994792 at *3 (W.D.N.Y. July 14, 2006) (unpublished) ("Whether or not an accommodation is reasonable, however, is generally a question of fact for the trier of fact ... [because t]he trier of fact is in the best position to weigh [all the relevant] considerations").

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*10 Summary judgment is particularly inappropriate where, as here, Defendant TDCJ has some evidence that the accommodations cited by Plaintiffs are unreasonable. For example, Plaintiffs allege that TDCJ should have accommodated Burrell with housing outside of the Administrative Segregation unit. (PMSJ at 1.) TDCJ, however, has evidence that alternative housing would not have been appropriate. The Administrative Segregation unit is a special unit of the prison used to house inmates who are particularly dangerous or believed to be a security risk. (DE1 C at 1-32.) Prisoners in Level III administrative segregation, for example, have “a very extensive assaultive history” and are deemed a threat to other offenders or TDCJ officers. (DE2 B at 78.) With respect to Burrell in particular, Defendant has evidence that he was a known gang member. (See DE2 B at 79.) Plaintiffs have not conclusively shown that there was a reasonable alternative to housing Burrell in Administrative Segregation, taking into account TDCJ's security concerns. Similarly, Plaintiffs allege that prison guards should have accommodated Burrell by transporting him out of his cell immediately upon being informed of his asthma attack. (PMSJ at 1.) Defendant TDCJ, however, has provided evidence that transporting Burrell out of his cell immediately would not have been reasonable. TDCJ has evidence that it is a “usual occurrence” for prisoners in administrative segregation to fake an illness in order to trick

the guards. (DE2 F at 2; B at 78-79.) Furthermore, Defendants have evidence showing they had reason to believe, albeit erroneously, that Burrell might be faking his illness because he appeared to be breathing and was lying in way that he could be hiding a weapon. (DE2 C at 39-41 D at 54-55.) In sum, Plaintiffs have not proven that the accommodations they request are such that the fact-finder would be compelled to find them reasonable. Therefore, Plaintiffs' motion for partial summary judgment against TDCJ must be DENIED. Because the Plaintiffs have not conclusively established an essential element of their claim, the Court need not address whether Plaintiffs have met the other elements of their ADA and RA claims, such as whether Burrell had a “disability” within the meaning of the statutes, and whether TDCJ knew of Burrell's need for particular accommodations.

IV. CONCLUSION

For the reasons discussed above, Defendant TDCJ's Motion for Summary Judgment (D.E.47) and Plaintiffs' Motion for Partial Summary Judgment (D.E.88, 90) are both DENIED.

All Citations

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Footnotes

- 1 On December 1, 2005, this Court dismissed Plaintiffs' claims against TDCJ under the Texas Human Resources Code and 42 U.S.C. § 1983. (See D.E. 23, 24, 33.) The Court also dismissed Plaintiffs' § 1983 claims for money damages against TDCJ employees in their official capacities. (D.E.23, 24.)
- 2 Plaintiffs' Exhibits “A” through “T” are attached to Docket Entry 58. Plaintiffs' Exhibits “1” through “28” are attached to Docket Entry 90.
- 3 For the purposes of this summary judgment order, the Court will use “DE1” to refer to the Defendant TDCJ's exhibits attached to Docket Entry 47. The Court will use “DE2” to refer to Defendant TDCJ's exhibits attached to Docket Entry 67.
- 4 On June 27, 2006, TDCJ filed a “Motion to Submit Additional Briefing on the Issue of Standing.” (See D.E. 77, 82.) Because TDCJ raised the issue of standing in their original motion for summary judgment (DMSJ at 3), TDCJ's motion to submit additional briefing on this issue (D.E.82) is GRANTED and the Court will consider the arguments raised in the additional briefing. Plaintiffs' Motion to Strike (D.E.87) the additional briefing is DENIED.
- 5 TDCJ's standing argument might have merit with respect to claims brought under 42 U.S.C. § 1983. TDCJ's motion for summary judgment, however, did not address any of Plaintiffs' § 1983 claims. Rather, the motion was brought only “on [Plaintiffs'] ADA and Rehabilitation Act Claims.” (See DMSJ at 1.)
- 6 As one commentator noted: “[t]o provide reasonable accommodation to prevent prisoners with disabilities from enduring more punishment than non-disabled prisoners is not special treatment. For example, a bilateral amputee inmate claimed that because there were no handrails in the shower and toilet area, he repeatedly fell and hurt himself while trying to use the facilities. To provide accommodations to remedy this problem only ensures that the disabled prisoner does not suffer psychologically or physically more than non-disabled prisoners.” Emily Alexander, *The Americans With Disabilities Act and State Prisons: A Question of Statutory Interpretation*, 66 Fordham L.Rev. 2233, 2283 (1998).
- 7 It is unclear from this evidence whether Burrell was requesting a “rescue” (Albuterol) inhaler or a “controller” (Azmacort) inhaler when he made this request from prison officials. There is evidence that Burrell had been issued a “rescue” inhaler

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by prison officials approximately two weeks earlier (DE1 A), and TDCJ also has evidence that a “rescue” inhaler was found in Burrell's cell after his death. (DE1 D at 2.) Because there is evidence suggesting that Burrell already had a “rescue” inhaler in his possession, a jury could reasonably infer that Burrell was requesting a “controller” inhaler.

- 8 Plaintiffs, in their motion for partial summary judgment, read *United States v. Georgia*, 546 U.S. 151, 126 S.Ct. 877 (2006) to mean that “Defendants violate the ADA and Rehabilitation Act when their actions would also violate the Eighth Amendment right to be free of cruel and unusual punishment.” (PMSJ at 4.) Thus, Plaintiffs argue that, if they “can prove that Mr. Burrell's Eighth Amendment rights were violated, they have also proved that a violation of the ADA took place.” (PMSJ at 4.) Plaintiffs argument is unpersuasive, however, because it rests on a fundamental misreading of the *Georgia* case. The *Georgia* case stands only for the proposition that a state is *not immune* under the ADA when the conduct which violates the ADA also violates the Eighth Amendment. *Id.* at 882. *Georgia* does not stand for the proposition that every Eighth Amendment violation is also a *per se* violation of the ADA. Although there may be some overlap between the requirements of the Eighth Amendment and the ADA, the substantive standards of each are different. See, e.g., *Delano-Pyle v. Victoria County*, 302 F.3d 567, 575 (5th Cir.2002) (noting differences between constitutional claims and the ADA, including the fact that “[t]here is no ‘deliberate indifference’ standard applicable to public entities for purposes of the ADA or the RA”). Therefore, Plaintiffs cannot establish an ADA and RA violation merely by showing that the Eighth Amendment was violated. Accordingly, Plaintiffs' discussion of the Eighth Amendment in their motion for partial summary judgment is largely immaterial.

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469 Fed.Appx. 295

This case was not selected for publication in the Federal Reporter. Not for Publication in West's Federal Reporter See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also Fifth Circuit Rules 28.7, 47.5.3, 47.5.4. (Find CTA5 Rule 28 and Find CTA5 Rule 47) United States Court of Appeals, Fifth Circuit.

Melinda MORA, Plaintiff–Appellant

v.

UNIVERSITY OF TEXAS SOUTHWESTERN MEDICAL CENTER, Defendant–Appellee.

No. 11–10279.

|

March 8, 2012.

Synopsis

Background: Employee of Texas state entity who was fired, in part, for being intoxicated on the job after her supervisors were aware she had been receiving treatment for alcoholism brought lawsuit alleging employment discrimination and retaliation under the Americans with Disabilities Act (ADA). Employer moved to dismiss for failure to state a claim. The United States District Court for the Northern District of Texas granted motion. Employee appealed.

Holdings: The Court of Appeals held that:

- [1] employee failed to adequately plead she had a “disability” as required for discrimination claim;
- [2] employee failed to allege facts showing that she was “qualified” to receive Employee Assistance Program (EAP) services even after her termination; and
- [3] employee failed to adequately plead claim of unlawful retaliation under the ADA.

Affirmed.

Attorneys and Law Firms

*296 Thad D. Spalding, Esq., Law Office of Marc Richman, Dallas, TX, for Plaintiff–Appellant.

Jonathan Franklin Mitchell, Esq., Office of the Solicitor General, Angela Veronica Colmenero, Esq., Assistant Attorney General, Office of the Attorney General, Austin, TX, for Defendant–Appellee.

Appeals from the United States District Court for the Northern District of Texas, USDC No. 3:09–CV–927.

Before STEWART, CLEMENT, and GRAVES, Circuit Judges.

Opinion

PER CURIAM: *

**1 Melinda Mora appeals the district court's dismissal of her lawsuit against her former employer, the University of Texas Southwestern Medical Center (“UTSMC”), under Titles II and V of the Americans with Disabilities Act (“ADA”). Because the district court correctly determined that Mora's amended complaint failed to state a claim for which relief can be granted, *see* FED.R.CIV.P. 12(b)(6), we AFFIRM.

FACTS AND PROCEEDINGS

Mora was employed by UTSMC, a state entity, as a program manager from 1996 until 2007. Mora alleges that she was fired from her job for being an alcoholic. Before being fired, Mora had received treatment for alcoholism from UTSMC's Employee Assistance Program (“EAP”). Mora was fired, in part, for being intoxicated on the job during February of 2007, after her supervisors were aware that she had been receiving treatment for alcoholism.

After her termination, Mora filed a complaint with the Equal Employment Opportunity Commission (“EEOC”), then brought a lawsuit against UTSMC alleging (1) employment discrimination on the basis of a disability under Title I of the ADA and (2) retaliation under Title V of the ADA. UTSMC moved to dismiss the Title I claims on the now-uncontroverted ground that, as the Supreme Court has directly held, Title I of the ADA does not validly abrogate the states' sovereign immunity, meaning that Title I claims cannot be

heard by the federal courts. *See Bd. of Trs. of Univ. of Ala. v. Garrett*, 531 U.S. 356, 374, 121 S.Ct. 955, 148 L.Ed.2d 866 (2001). The district court granted UTSMC's motion, but permitted Mora to replead her claim under Title II of the ADA, which prohibits discrimination on *297 the basis of disability in the provision of government services and programs. Mora's amended complaint alleged that (1) her removal from the EAP following her dismissal constituted wrongful exclusion from a government service or program on the basis of a disability in violation of Title II of the ADA, and (2) after her firing, UTSMC retaliated against her in violation of Title V of the ADA by "disparaging" her to prospective employers. The district court dismissed all of Mora's claims with prejudice pursuant to Rule 12(b)(6) and entered final judgment against her. This timely appeal followed.

STANDARD OF REVIEW

We review a district court's ruling on a 12(b)(6) motion to dismiss *de novo*. *Randall D. Wolcott, M.D., P.A. v. Sebelius*, 635 F.3d 757, 763 (5th Cir.2011). We accept all well-pleaded facts as true and view those facts in the light most favorable to the plaintiff, but "we are not bound to accept as true a legal conclusion couched as factual allegation." *Id.* (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009)) (internal quotation marks omitted). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Iqbal*, 129 S.Ct. at 1949 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)).

DISCUSSION

1. Title II Claims

**2 Title II of the ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. Mora contends that her removal from the EAP constituted a violation of this provision and argues that her amended complaint pled sufficient facts to support her Title II claim. However, Mora's amended complaint was deficient for at least two reasons: (1) it failed to plead adequate facts to show that she has a "disability" within the meaning of the ADA, and (2) it failed to allege facts showing that

she was "qualified" to receive EAP services even after her termination.

a. "Disability"

[1] Mora's complaint failed to adequately plead that she has a "disability" for purposes of the ADA. The ADA defines "disability" as "(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment." 42 U.S.C. § 12102(1). Although Mora alleged that she is an alcoholic and recited that her alcoholism impairs a major life activity, she did not specify which of her "life activities" is substantially limited. This is fatal to stating a valid claim for relief. As the Supreme Court has explained, a valid complaint must do more than give "a formulaic recitation of the elements of a cause of action." *Twombly*, 550 U.S. at 555, 127 S.Ct. 1955.

At best, Mora's complaint alleges only that she was (or was regarded as being) substantially impaired in her ability to do her job with UTSMC, but "[w]hen the major life activity under consideration is that of working, the statutory phrase 'substantially limits' requires, at a minimum, that plaintiffs allege they are unable to work in a broad class of jobs." *Sutton v. United Air Lines, Inc.*, 527 U.S. 471, 491, 119 S.Ct. 2139, 144 L.Ed.2d 450 (1999). *298 Because her complaint, even liberally construed, alleged only that she was, or was regarded as being, impaired in the performance of her specific job with UTSMC, her pleadings are legally insufficient. *See Kemp v. Holder*, 610 F.3d 231 (5th Cir.2010).

b. "Qualified"

[2] Mora's complaint also failed to allege facts that, if true, would establish that she was relevantly "qualified" to receive continued treatment in the EAP. A "qualified individual with a disability" is

an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, *meets the essential eligibility requirements* for the receipt of services or the participation in programs or activities provided by a public entity.

42 U.S.C. § 12131(2) (emphasis added). At the time she was denied EAP services, Mora no longer met the “essential eligibility requirements” for the receipt of such services because UTSMC understandably provides EAP services only to its employees, and *Mora was no longer employed by UTSMC*.

****3** Mora argues that her claim should be permitted because the reason for her ineligibility was her discriminatory termination. But the language of Title II does not permit Mora’s attempt to shoehorn what is essentially a Title I claim into Title II. Title II forbids denying services to a person with a disability “by reason of such disability.” UTSMC did not deny Mora alcohol treatment “by reason of” her alcoholism. As the state correctly argues,

Title II does not require public entities to investigate the reasons behind an individual’s ineligibility, nor does it contain an exception that makes an [sic] person “eligible” if the reason for their [sic] ineligibility is a discriminatory act. Instead, Title II requires that the denial of state services itself be “by reason of such disability.”

The language of Title II simply does not encompass Mora’s claim that she was wrongly fired for being an alcoholic.

2. Title v. Claims

[3] Mora’s complaint also failed to adequately plead a claim under Title V. A claim of unlawful retaliation under the ADA requires a showing that (1) the plaintiff engaged in an activity protected by the ADA, (2) she suffered an adverse employment action, and (3) there is a causal connection between the protected act and the adverse action. *Seaman v. CSPH*, 179 F.3d 297, 301 (5th Cir.1999). The allegations in Mora’s amended complaint relating to her Title V claim stated, in their entirety:

[UTSMC] retaliated against Mora for exercising her rights under the ADA in violation of 42 U.S.C. § 12203(a). These Title V retaliation claims are based on actions taken by [UTSMC] in violation of Title II of the ADA.

[UTSMC] has disparaged and continues to disparage Mora to potential employers for whom Mora has sought to gain employment, and thereby prevented Mora from gaining employment with a Fort Worth hospital. Furthermore, [UTSMC’s] decision to terminate Mora was based in part on her complaints about [UTSMC’s] unwillingness to accommodate her disability limitations.

These allegations fail to state a claim under Article V. With respect to her allegation that UTSMC “disparaged” her to potential employers after she was fired, Mora’s complaint does not identify any “protected activity” for which UTSMC was ***299** supposedly retaliating against her. On appeal, Mora argues that UTSMC’s disparagement of her was retaliation against her filing of a charge with the Texas Workforce Commission and the EEOC, but her complaint in the district court alleged no facts that indicate a “causal connection” between these filings and UTSMC’s alleged disparagement of her.

Mora’s complaint can be read as asserting that UTSMC retaliated against her by firing her for complaining about its unwillingness to accommodate her disability. But this allegation is contradicted by the other facts alleged in the complaint, making the claim implausible on its face. The complaint sets forth no facts suggesting that Mora ever complained about any “unwillingness to accommodate her disability.” Mora only complained *after* she was fired and removed from the EAP. Indeed, before she was fired, UTSMC *was* accommodating her disability by providing her with treatment for alcoholism through the EAP. Thus, Mora failed to plead a valid claim under Title V.¹

CONCLUSION

****4** For the reasons set forth above, the judgment of the district court is AFFIRMED.

All Citations

469 Fed.Appx. 295, 2012 WL 745101, 44 NDLR P 233

Footnotes

- * Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

44 NDLR P 233

- 1 Because we agree with the district court's determination that Mora failed to state a valid claim under the ADA, we need not address UTSMC's argument that Mora's claims under Title II and Title V are barred by state sovereign immunity.

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397 Fed.Appx. 13

This case was not selected for publication in West's Federal Reporter. See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S.Ct. of App. 5th Cir. Rules 28.7 and 47.5. United States Court of Appeals, Fifth Circuit.

Annie L. MZYK, Plaintiff–Appellant

v.

NORTH EAST INDEPENDENT SCHOOL DISTRICT, Defendant–Appellee.

No. 10–50037

|
Summary Calendar.

|
Sept. 30, 2010.

Synopsis

Background: School district employee brought action against her employer, alleging that she was subject to discrimination and retaliation under Age Discrimination in Employment Act (ADEA), Americans with Disabilities Act (ADA), and Title VII. The United States District Court for the Western District of Texas granted employer's motion for summary judgment. Employee appealed.

Holdings: The Court of Appeals held that:

[1] employee failed to state adverse action element of age discrimination claim under ADEA;

[2] other employees with whom employee compared herself were not truly comparable, for purposes of ADEA claim;

[3] employee's various physical ailments and stress did not constitute “disabilities” within meaning of ADA; and

[4] employer did not make any employment decisions about employee that would not have been made “but for” her protected activity, as required to sustain retaliation claims.

Affirmed.

Attorneys and Law Firms

*14 Annie L. Mzyk, San Antonio, TX, pro se.

Ricardo Rene Lopez, Joseph E. Hoffer, Esq., Feldman, Rogers, Morris & Grover, L.L.P., San Antonio, TX, for Defendant–Appellee.

Appeal from the United States District Court for the Western District of Texas, No. 5:08–CV–00344.

Before DAVIS, SMITH, and SOUTHWICK, Circuit Judges.

Opinion

PER CURIAM: *

**1 Plaintiff–Appellant Annie L. Mzyk appeals the district court's entry of summary judgment dismissing all of Mzyk's claims against her employer. For the reasons stated herein, we affirm the district court's judgment.

I.

Mzyk filed pro se various discrimination claims against her employer, Defendant–Appellee North East Independent School District (“NEISD”), in the district court. Specifically, she has raised claims pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, *et seq.* (“Title VII”) for discrimination based on her national origin (Polish American), a hostile work environment, and retaliation; claims pursuant to the Age Discrimination in Employment Act, 29 U.S.C. §§ 621, *et seq.* (“ADEA”), for age discrimination and retaliation; and claims pursuant to the Americans with Disabilities Act, 42 U.S.C. §§ 12102, *et seq.* (“ADA”) for disability discrimination, failure to accommodate, and retaliation.

Mzyk is employed as an administrative assistant by NEISD. Construing her pro se complaint and other documents in the record in a favorable light, Mzyk generally asserts the following facts: that NEISD refused her repeated requests to increase the pay grade of her position to compensate her for increases in duties and work load—primarily the responsibility given to her for answering the NEISD main telephone line—which is purportedly inconsistent with NEISD's treatment of other similarly situated employees who have received pay increases and reduced work loads;

that such actions are allegedly due to her Polish national origin and her age, as well as retaliation for previous charges of discrimination; and that NEISD has allegedly refused to accommodate her requests for changes in work duties that she has made due to her various physical ailments. As relief, Mzyk seeks back wages and benefits, various kinds of injunctive relief related to the distribution of her work duties, other compensatory damages, and litigation costs and fees.

The district court assigned all pre-trial proceedings to a magistrate judge, including NEISD's motion for summary judgment. The magistrate judge issued a report to the district court recommending *15 that all of Mzyk's claims should be dismissed upon NEISD's motion for summary judgment (the "Report"). The magistrate judge noted that subsequent to filing her complaint, Mzyk expressly waived her Title VII claims of national origin discrimination and hostile work environment, while choosing to maintain her other claims: (1) ADEA discrimination and retaliation; (2) ADA discrimination, failure to accommodate, and retaliation; and (3) Title VII retaliation.

[1] [2] Reciting the undisputed facts, the magistrate judge determined that Mzyk failed to prove two elements of her prima facie age discrimination claim under ADEA: (1) that she suffered an adverse employment action; and (2) that others similarly situated but outside the protected group received more favorable treatment.¹ The magistrate judge concluded that Plaintiff had not stated an adverse employment action because she had simply alleged that the salary level for the administrative assistant position that she held was inadequate and discriminatory. She did not allege that failure to increase her pay as compared to other employees who held the same position was discriminatory.² The magistrate judge determined that Plaintiff failed to prove the second prima facie element of her age discrimination claim, noted above, because she failed to provide any competent summary judgment evidence that other employees with whom she compared herself were truly comparable. *See Lee v. Kansas City S. Ry. Co.*, 574 F.3d 253, 260 (5th Cir.2009) ("[A]n employee who proffers a fellow employee as a comparator" must "demonstrate that the employment actions at issue were taken under nearly identical circumstances.") (internal quotation marks omitted).

**2 [3] With regard to Mzyk's claims under the ADA (disparate treatment and failure to accommodate), the magistrate judge determined on the basis of the undisputed facts that Plaintiff could not meet the prima facie

requirements for either ADA claim because she presented no evidence that she suffered from a "disability," as defined by the ADA.³ Relying on the testimony of Mzyk's doctor, the magistrate judge noted that the physician had diagnosed Plaintiff with various physical ailments *16 and with stress, but not with any condition substantially impairing one or more of her major life activities, as generally required to meet the ADA's definition of "disability." *See Pryor v. Trane Co.*, 138 F.3d 1024, 1026 (5th Cir.1998) ("Temporary, non-chronic impairments of short duration, with little or no longer term or permanent impact, are usually not disabilities."); *Dupre v. Charter Behavioral Health Sys. of Lafayette, Inc.*, 242 F.3d 610, 614 (5th Cir.2001) ("[N]ot all impairments are serious enough to be considered disabilities under the statute."). The magistrate judge concluded that Plaintiff had presented no evidence from which a reasonable jury could conclude that she had a disability under the ADA definition.

[4] Finally, regarding Plaintiff's retaliation claims under ADEA and ADA,⁴ the magistrate judge concluded on the basis of the undisputed facts that, even assuming Plaintiff had established prima facie retaliation claims, she failed to provide evidence sufficient to raise a genuine issue of material fact regarding the causation element of the retaliation claims. Specifically, the magistrate judge determined that Mzyk did not present evidence capable of showing that NEISD made any employment decisions concerning her that would not have been made "but for" her protected activity, as required to sustain such claims. *See, e.g., Septimus v. Univ. of Houston*, 399 F.3d 601, 608 (5th Cir.2005).

The district court reviewed the magistrate judge's Report and conducted an independent review of the entire record and a de novo review of those matters in the Report to which the Plaintiff objected.⁵ The district court then accepted the magistrate judge's recommendations in its Order Accepting Report and Recommendation of the United States Magistrate Judge, dated December 10, 2009, thereby dismissing all of Plaintiff's claims on summary judgment.

II.

This court reviews the district court's grant of summary judgment de novo, applying the same legal standard as the district court. *Turner v. Baylor Richardson Med. Ctr.*, 476 F.3d 337, 343 (5th Cir.2007). Summary judgment is appropriate when the record reveals that "there is no genuine

issue as to any material fact and that the movant is entitled to summary judgment as a matter of law.” FED.R.CIV.P. 56(c)(2). In making this determination, the court considers the facts and the inferences to be drawn from them in the light most favorable to the nonmoving party. *Turner*, 476 F.3d at 343 (citing *Wyatt v. Hunt Plywood Co., Inc.*, 297 F.3d 405, 408 (5th Cir.2002)). But a nonmoving party “cannot defeat summary judgment with conclusory allegations, unsubstantiated assertions, or ‘only a scintilla of evidence.’ ” *Turner*, 476 F.3d at 343 (quoting *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir.1994) (en banc)).

****3** In seeking to challenge the district court's grant of summary judgment on this pro se appeal, the Appellant makes no more than conclusory allegations and assertions. *See* Plaintiff–Appellant's Brief at 13–17. In her brief, Appellant does not raise any material doubts about the legal or factual accuracy of the magistrate judge's Report. After reviewing the record and considering the briefing of the ***17** parties, we conclude that the magistrate judge and the district court correctly read the record and applied the correct legal standards with respect to all of Mzyk's claims. Accordingly, we affirm the district court's judgment.

III.

All Citations

397 Fed.Appx. 13, 2010 WL 3926853, 263 Ed. Law Rep. 529

Footnotes

- * Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.
- 1 The Report recites the prima facie requirements for an age discrimination claim based on disparate treatment that the magistrate judge applied. The Plaintiff was required to show: (1) that she belongs to a protected group of persons over the age of forty; (2) that she was qualified for the position; (3) that she suffered an adverse employment action; and (4) that others similarly situated but outside the protected group received more favorable treatment. *See Willis v. Coca Cola Enters., Inc.*, 445 F.3d 413, 420 (5th Cir.2006); *Rutherford v. Harris County Tex.*, 197 F.3d 173, 184 (5th Cir.1999).
- 2 Mzyk does not deny having received annual within-pay-grade increases or an actual pay-grade increase in July 2008.
- 3 The magistrate judge recited the prima facie elements that she applied to Plaintiff's ADA claims. To establish a prima facie case of disparate treatment due to disability, Plaintiff was required to show: (1) she is disabled; (2) she was nonetheless qualified to do the job; (3) an adverse employment action was taken against her; and (4) she was replaced by or treated less favorably than non-disabled employees. *See Aldrup v. Caldera*, 274 F.3d 282, 286 (5th Cir.2001); *McInnis v. Alamo Cmty. Coll. Dist.*, 207 F.3d 276, 279–80 (5th Cir.2000). To establish a prima facie case of discrimination based on failure to accommodate a disability, Plaintiff was required to show: (1) the employer is covered by the statute; (2) she is an individual with a disability; (3) she can perform the essential functions of the job with or without reasonable accommodation; and (4) the employer had notice of the disability and failed to provide accommodation. *See, e.g., Bridges v. Dep't of Soc. Serv.*, 2001 WL 502797, *1 (5th Cir. Apr.27, 2001) (citing *Lyons v. Legal Aid Soc'y*, 68 F.3d 1512, 1515 (2d Cir.1995)).
- 4 The magistrate judge determined that Mzyk abandoned her Title VII retaliation claim by failing to present evidence in support thereof.
- 5 Plaintiff filed objections to various elements of the Report's recitations of fact and conclusions of law.

364 Fed.Appx. 883

This case was not selected for publication in the Federal Reporter.
Not for Publication in West's Federal Reporter
See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also Fifth Circuit Rules 28.7, 47.5.3, 47.5.4. (Find CTA5 Rule 28 and Find CTA5 Rule 47)
United States Court of Appeals,
Fifth Circuit.

William James THAYER, Plaintiff-Appellant
v.

Mary ADAMS, Nurse Manager; Kristi Flisowski, LVN; Margie Gonzales, LVN; Kathleen A. Rogers, Defendants-Appellees.

No. 08-20817.

Feb. 4, 2010.

Synopsis

Background: Inmate sued nurses under § 1983, claiming that they inflicted wanton and unjustifiable pain and suffering upon him by failing to respond to his serious medical needs, in violation of the Eighth Amendment. The United States District Court for the Southern District of Texas granted summary judgment against the inmate, and he appealed.

Holdings: The Court of Appeals held that:

[1] nurses were not deliberately indifferent to the inmate's serious medical needs;

[2] inmate's complaint did not make allegations sufficient to overcome the defense of qualified immunity, and thus, the inmate was not entitled to discovery; and

[3] inmate was not entitled to appointed counsel.

Affirmed

Attorneys and Law Firms

*884 William James Thayer, Tennessee Colony, TX, pro se.

Christina Ann Denmark, Segal, McCambridge, Singer & Mahoney, Jennifer Jean Wells, Grady L. Williamson, Office of the Attorney General, Austin, TX, for Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Texas, USDC No. 4:07-CV-920.

Before GARZA, DeMOSS, and CLEMENT, Circuit Judges.

Opinion

PER CURIAM: *

**1 Plaintiff William James Thayer appeals the district court's entry of summary judgment in favor of Defendants Mary Adams, Kristi Flisowski and Margie Gonzales on Thayer's deliberate indifference claim arising under 42 U.S.C. § 1983. Thayer is an inmate in the custody of the Texas Department of Criminal Justice (TDCJ). He alleges that defendants inflicted wanton and unjustifiable pain and suffering upon him by failing to respond to his serious medical needs in violation of the Eighth Amendment to the U.S. Constitution. For the reasons stated herein, we affirm the district court's decision.

I. FACTS AND PROCEDURE

Thayer's Allegations

Thayer was scheduled to have knee replacement surgery on March 28, 2005, while in custody of TDCJ. The procedure was halted and Thayer was discharged from the University of Texas Medical Branch (UTMB) because he had an anaphylactic response to a medication. Thayer received 23 staples in his knee and was *885 remanded to the Ellis Unit of TDCJ. Upon arriving at Ellis Unit on the evening of March 28, Thayer was assigned to a cell up a flight of stairs and was given no blankets or sheets. He required the assistance of other inmates to reach his cell because he could not climb stairs alone. He could not sleep because he was cold and in pain. The next day, March 29, Thayer went to the infirmary for "emergency treatment," but stated that he was denied treatment by defendants Flisowski and Gonzales, who were nurses employed by TDCJ. Thayer was able to receive pain medication from the pill window. Thayer alleged, however, that he received inadequate treatment or no treatment at all between March 29, 2005, and April 2, 2005. He says his pain medication was discontinued at the direction of

defendant Adams. He sued, alleging that Flisowski, Gonzales, and Adams acted with deliberate indifference to his pain and legitimate medical needs. Thayer sought declaratory and injunctive relief, as well as punitive damages. He moved for appointment of counsel, which the district court denied.

The Attorney General advised the court that defendants Flisowski and Gonzales were no longer employed by UTMB. Adams answered, denied wrongdoing, and asserted her entitlement to official immunity, immunity under the Eleventh Amendment, and qualified immunity. Adams moved for summary judgment, stating that she was not the nurse manager of the Ellis Unit while Thayer was housed there. Rather, she was manager of the Estelle Unit, and had no responsibility over the Ellis Unit until she was transferred there on August 1, 2005. She also stated that she never received Thayer's emergency grievances. Adams submitted personnel records and a sworn affidavit in support of these assertions.

Declarations by Thayer and Other Inmates

In response to Adams's motion, Thayer filed a declaration reiterating the assertions from his complaint. Thayer stated that, on the morning of March 29, 2005, he presented himself, with the help of fellow inmates, to the infirmary, where Flisowski and Gonzales were working. After Thayer explained to them his condition, including his return from the hospital, his cell assignment, and "being in severe pain," both said that they were too busy to help, even though "all they were doing was sitting at the desk talking." Thayer then filed emergency grievances. The next day, March 30, 2005, Thayer went to the pill window, "and was told [his] medication had been discontinued." He went to the infirmary, where Flisowski told him Adams had ordered his medication discontinued. Thayer explained his situation once more to Flisowski and asked her to look into his file. She did so, but said she could do nothing for him at that time. Thayer next states: "I was helped back to my cell which I stayed in because I couldn't get around and the pain I was in was so severe. Inmates gave me food because I couldn't make it to the chow hall." Finally, Thayer was examined on April 2, 2005, by a nurse Connell, who is not a defendant. Connell called a doctor, who reinstated Thayer's pain medication. Thayer's dressing was changed for the first time on April 2, 2005. He had swelling and bruises on his leg, but no infection.

****2** Thayer also submitted the declaration of Marc Ashbrook, a fellow TDCJ inmate, who repeated many of Thayer's assertions. Ashbrook said that on March 29,

Flisowski and Gonzales were too busy to help Thayer, even though both were just "sitting at the desk at the infirmary." On March 30, Ashbrook overheard Flisowski tell Thayer that Adams had discontinued Thayer's ***886** pain medication. Ashbrook stated: "Plaintiff was in so much pain he couldn't understand why they, the nurses and medical staff, were doing this to him when it was so obvious that he needed medical attention." Thayer also submitted medical records to the district court, which confirmed that he was scheduled for a knee replacement at UTMB. The operation was halted because Thayer had a "possible anaphylactic reaction" and became "severely hypotensive" after he was placed under general anesthesia and an incision was made on his leg. The records also show that Thayer was prescribed Tylenol with Codeine when he was discharged from UTMB. Notes from his April 2, 2005, examination reflect his assertion that "pain medication was discontinued and motrin ordered." The records also show that Thayer's surgery was rescheduled for the following week, and reflect his assertion that he "ha[d] been told not to take anything with motrin and aspirin prior to surgery." His "[i]ncision line [was] clean and dry," but he had swelling and bruises from the knee to the ankle.

The district court considered Adams's motion and Thayer's response, and held that summary judgment was inappropriate. The court concluded that "a fact issue remains about whether Nurse Adams had any personal involvement in the discontinuation of Thayer's pain medication or in the supervision of others who were charged with providing him with medical care." The court also noted that Flisowski and Gonzales had not been served and that neither had filed an answer. Because they no longer worked for TDCJ, these defendants could not be represented by the Attorney General without their express consent. The court stated it would order service on Flisowski and Gonzales separately. Finally, the court allowed Thayer to correspond with three inmates who had witnessed Thayer's treatment for the purpose of obtaining a declaration or affidavit.

Thayer then filed a request for production of documents. He asked to be provided with copies of grievances, complaints, and related documents filed against the defendants, their work histories, policies, a health care manual, "[a]ny and all orders Medical Supervisor Mary Adams made during her employment with UTMB & TDCJ," the grievance manual, and several other similar documents. Adams opposed the motion. The district court denied the motion because Thayer had not requested leave to conduct additional discovery, because he had not shown how his requests related to his

claims, and because Adams had asserted the defense of qualified immunity.

Flisowski answered. She denied refusing to treat Thayer, or that she had any role in discontinuing his pain medication. She raised, *inter alia*, the defenses of sovereign immunity under the Eleventh Amendment and qualified immunity.

****3** Thayer then filed declarations by Michael Hooks and William E. Hancock, Jr. Hooks said he helped Thayer to the pill window, where “the pill window nurse” told him that his medication had been discontinued. Hooks then repeated many of the same assertions that Thayer and Ashbrook made, including that Flisowski and Gonzales did not treat Thayer on March 29, despite not being busy at the time; that Flisowski stated on March 30 that Adams had ordered Thayer's pain medication discontinued; and that Thayer was in obvious pain. Hancock's declaration provided general assertions that Flisowski and Gonzales did not provide adequate medical treatment to inmates. Hancock stated that he once spoke with Thayer while Thayer was in the infirmary; Thayer told Hancock that “his knee was always hurting him badly and she would give him Ibuprofin for the pain, but refused to give ***887** him anything stronger.” Hancock did not state when this conversation took place.

The district court then ordered the office of the Attorney General of Texas, counsel for defendants Adams and Flisowski, to file a report under *Martinez v. Aaron*, 570 F.2d 317 (10th Cir.1978), or in the alternative, to file a motion for summary judgment within 60 days.

Defendants' Summary Judgment Motion and Thayer's Response

Adams and Flisowski then moved for summary judgment.¹ They submitted Thayer's medical records and an affidavit from Nurse Mary Gotcher in support of the motion. Defendants asserted that Thayer was prescribed Tylenol # 3 with Codeine when he was discharged from UTMB, and that this drug must be picked up from the pill window. When Thayer arrived at the Ellis Unit on March 28, 2005, UTMB physician Dr. Glenda Adams changed his medication from Tylenol # 3 to Motrin. Inmates are allowed to keep Motrin with them and are not required to go to the pill window to get this drug. Medical personnel examined Thayer on April 2, 2005, and noted that his incision was “clean and dry.” Thayer complained about the change in medication. A member of the nursing staff contacted a doctor, who ordered

that the prescription for Tylenol # 3 be reinstated. Thayer underwent surgery on April 15, 2005, and was discharged with prescriptions for Tylenol # 3 and a blood thinner. He received these medications. The defendants argued that they were entitled to qualified immunity because they were not personally involved with changing Thayer's prescription, his assignment to a certain cell, or his not receiving blankets and sheets. They alternatively argued that these actions did not amount to deliberate indifference. They contended that Thayer's suit was barred by Eleventh Amendment immunity to the extent he sought to recover against them in their official capacities.

The documents submitted by the defendants supported their factual assertions. Medical records show that Thayer was admitted to UTMB on March 21, 2005, and was discharged on March 28, 2005, with a prescription for Tylenol with Codeine (Tylenol # 3). Dr. Adams prescribed Motrin for him when he arrived at the Ellis Unit and discontinued the Tylenol # 3. Thayer had surgery in April 2005 and was discharged with prescriptions for Tylenol # 3 and injections of Lovenox, an anticoagulant.

****4** Gotcher was the Nursing Director at UTMB, Correctional Managed Care, and she supervised nursing personnel at 43 TDCJ facilities. She reviewed Thayer's records before giving her affidavit, and she was familiar with UTMB policies and procedures concerning nursing care. Gotcher confirmed that “Adams did not work at the Ellis Unit during the time frame of this lawsuit and would have had no personal involvement in the medical care of an inmate at the Ellis Unit.” Rather, Adams was the Cluster Nurse Manager of the Estelle Unit at this time. Because Flisowski and Gonzales were LVNs, their “scope of practice” did not include ordering “any treatment or medication for any patient.” Gotcher noted that Dr. Adams changed Thayer's prescription from Tylenol # 3 four times a day to Motrin as needed, and Dr. Adams's order specified that Thayer was to be permitted to keep Motrin on his ***888** person. This change allowed Thayer to keep his medication with him, rather than having to ambulate to the pill window. “The Dr. Adams referred to in Thayer's medical record is Dr. Glenda Adams, not Cluster Nurse Manager Mary Adams.” Thus, “[i]f someone informed Mr. Thayer that his medications had been changed by ‘Adams,’ that reference would be to Dr. Glenda Adams, who did change his Tylenol # 3 prescription to Motrin.” Due to the change in medications ordered by Dr. Adams, Flisowski and Gonzales could not have given Thayer Tylenol # 3.

Thayer responded to the motion for summary judgment and offered his own declaration and medical records in support of the response as well as declarations from Ashbrook, Hooks, Hancock, and inmate Daniel Straw. Thayer insisted that the defendants “refused [him] all and any kind of medical treatment” and thus acted with deliberate indifference.

The District Court's Ruling

The district court granted defendants' motion for summary judgment and dismissed Thayer's suit. The district court first determined that the defendants were entitled to Eleventh Amendment immunity insofar as Thayer sought damages against them in their official capacities. The court next concluded that the defendants were entitled to qualified immunity. The district court noted that Thayer's “chief complaint” was that Nurse Adams denied him pain medication by changing his prescription from Tylenol # 3 to Motrin, and that Thayer also complained that Nurses Flisowski and Gonzales “denied him care for pain after his prescription was changed” and did not give him fresh bandages. The court concluded that “the record shows that none of the defendants named in the complaint were involved in the decision to change Thayer's medication.” Rather, the decision was made by Dr. Glenda Adams. The district court noted that Thayer had submitted a copy of a grievance that he filed on March 31, 2005. In this grievance, he averred that someone in the infirmary told him that “Dr. Adams at U.T.M.B. discontinued medication.” The court held that Thayer's claim concerning the defendants' alleged interference with his “prescribed medication regime” failed because the evidence showed that the defendants were not personally involved with that decision.

****5** The district court recounted that Thayer's records showed that, upon discharge from UTMB on March 28, 2005, he was to use crutches, follow up with UTMB in two weeks, maintain a regular diet, and get Tylenol # 3. No orders were given for any particular follow up care at Ellis Unit; no restrictions were placed upon Thayer's cell assignment; no order was made for a dressing or bandage change; and no order was given for an anticoagulant. Dr. Adams then changed the pain medication to Motrin. The court concluded that the defendants did not have the power to override Dr. Adams's orders and that they did not act with deliberate indifference to Thayer's serious medical needs with respect to his medication.

Insofar as Thayer complained that his wound was not examined and his bandages were not changed, the district

court concluded that he had not shown that the defendants were deliberately indifferent. Thayer's wound was clean and dry on April 2, 2005, and his surgery was successfully performed that same month. Thayer did not show that he suffered any harm due to the defendants' failure to change his bandages or examine his wound. The court also concluded that the evidence did not show that defendants' actions were objectively unreasonable. Rather, “the medical records reflect that Thayer was treated according to the discharge instructions issued by UTMB on March 28, 2005.”

***889** The district court further noted that, although Gonzales was not served and had not answered, the same analysis that applied to Thayer's claims against the other defendants likewise applied to Thayer's claims against her. *See Lewis v. Lynn*, 236 F.3d 766, 768 (5th Cir.2001) (allowing non-answering defendants to benefit from grant of appearing defendants' summary judgment motion). The district court thus dismissed Thayer's claims against Gonzales. Thayer filed a timely notice of appeal.

II. DELIBERATE INDIFFERENCE CLAIMS

We review the grant of a motion for summary judgment *de novo*. *Xtreme Lashes, LLC v. Xtended Beauty, Inc.*, 576 F.3d 221, 226 (5th Cir.2009). Summary judgment is appropriate if the record discloses “that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.” FED.R.CIV.P. 56(c)(2). The proponent of the motion typically bears the burden of showing a lack of evidence to support his opponent's case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). If the movant meets his initial burden, the burden shifts to the nonmovant to set forth specific facts showing the existence of an issue for trial. *Id.* at 324, 106 S.Ct. 2548. The nonmovant cannot satisfy his summary judgment burden “with conclusory allegations, unsubstantiated assertions, or only a scintilla of evidence.” *Hathaway v. Bazany*, 507 F.3d 312, 319 (5th Cir.2007) (internal quotation marks and citations omitted).

We approach summary judgment differently when qualified immunity is at issue. *See id.* In this context, “[t]he moving party is not required to meet its summary judgment burden for a claim of immunity.” *Id.* (internal quotation marks and citation omitted). Rather, the movant need only plead her good-faith entitlement to qualified immunity, whereupon “the burden shifts to the plaintiff to rebut it.” *Id.* (internal quotation

marks, citation, and emphasis omitted); *see also Gates v. Texas Dep't of Protective & Regulatory Servs.*, 537 F.3d 404, 419 (5th Cir.2008) (noting that, when a government official pleads qualified immunity, the plaintiff must “rebut the defense by establishing that the official's allegedly wrongful conduct violated clearly established law and that genuine issues of material fact exist regarding the reasonableness of the official's conduct”).

A.

****6** Thayer argues that the evidence shows that the defendants were personally involved in denying him care and acted with deliberate indifference by “refusing any kind of medical treatment.” He reiterates his contention that Adams did not respond to his emergency grievance and discontinued his Tylenol # 3. The defendants contend that the district court properly granted judgment in their favor.

Thayer does not address, and has thus abandoned, the issue whether the district court erred by determining that the defendants were entitled to Eleventh Amendment immunity. *See Longoria v. Dretke*, 507 F.3d 898, 901 (5th Cir.2007) (noting that even pro se litigants must brief arguments in order to preserve them). Thayer thus has shown no error in connection with the district court's determinations that the defendants were entitled to immunity with respect to his claims against them in their official capacities and that their motion for summary judgment should have been granted as to these claims. *See id.*

B.

To determine whether officials are entitled to qualified immunity for a constitutional violation, we conduct a familiar two-step analysis. *See *890 Saucier v. Katz*, 533 U.S. 194, 201, 121 S.Ct. 2151, 150 L.Ed.2d 272 (2001), *overruled in part by Pearson v. Callahan*, --- U.S. ---, ---, 129 S.Ct. 808, 813, 172 L.Ed.2d 565 (2009); *see also Collier v. Montgomery*, 569 F.3d 214, 217 (5th Cir.2009). We first determine whether the plaintiff has alleged a violation of a constitutional right; “if so, we turn to whether the officers' conduct was objectively reasonable in light of clearly established law at the time the challenged conduct occurred.” *Tarver v. City of Edna*, 410 F.3d 745, 750 (5th Cir.2005) (citing *Anderson v. Creighton*, 483 U.S. 635, 639, 107 S.Ct. 3034, 97 L.Ed.2d 523 (1987)). We apply an objective standard, “based on the viewpoint of

a reasonable official in light of the information then available to the defendant and the law that was clearly established at the time of the defendant's actions.” *Freeman v. Gore*, 483 F.3d 404, 411 (5th Cir.2007). We have the discretion to decide which qualified immunity prong to address first, “in light of the circumstances in the particular case at hand.” *Collier*, 569 F.3d at 217.

Prison officials violate the Eighth Amendment's prohibition against cruel and unusual punishment when they demonstrate deliberate indifference to a prisoner's serious medical needs, constituting an “unnecessary and wanton infliction of pain.” *Wilson v. Seiter*, 501 U.S. 294, 297, 111 S.Ct. 2321, 115 L.Ed.2d 271 (1991) (internal quotation marks, citation, and emphasis omitted). A prison official acts with deliberate indifference if he “knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.” *Farmer v. Brennan*, 511 U.S. 825, 837, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994); *see also Gobert v. Caldwell*, 463 F.3d 339, 346 (5th Cir.2006). Failed treatments, negligence, and medical malpractice are insufficient to give rise to a successful claim of deliberate indifference to serious medical needs. *Gobert*, 463 F.3d at 346. A prisoner who merely disagrees with the course of treatment provided, or contends that he should have received additional treatment, likewise does not raise a viable deliberate indifference claim. *Id.*; *see also Domino v. Texas Dep't of Criminal Justice*, 239 F.3d 752, 756 (5th Cir.2001).

****7** To prevail on a claim of deliberate indifference to medical needs, the plaintiff must establish that the defendant denied him treatment, purposefully gave him improper treatment, or ignored his medical complaints. *Gobert*, 463 F.3d at 346; *Domino*, 239 F.3d at 756. “Medical records of sick calls, examinations, diagnoses, and medications may rebut an inmate's allegations of deliberate indifference.” *Gobert*, 463 F.3d at 346 n. 24 (quoting *Banuelos v. McFarland*, 41 F.3d 232, 235 (5th Cir.1995)). “Deliberate indifference is an extremely high standard to meet.” *Id.* at 346 (internal quotation marks and citation omitted). In a situation where the deficiencies in medical treatment were minimal, continuing pain alone does not constitute a constitutional violation. *Mayweather v. Foti*, 958 F.2d 91, 91 (5th Cir.1992). A delay in treatment likewise does not violate the Eighth Amendment unless there has been deliberate indifference that results in substantial harm. *Mendoza v. Lynaugh*, 989 F.2d 191, 195 (5th Cir.1993). Nevertheless, if a prisoner

establishes deliberate indifference to his serious medical needs, he may recover damages for pain he suffered during the delay of treatment. *See Easter v. Powell*, 467 F.3d 459, 464-65 (5th Cir.2006).

C.

[1] Thayer has not shown that the defendants acted with deliberate indifference to his serious medical needs concerning his *891 cell assignment, lack of blankets, lack of Tylenol # 3, lack of anticoagulant injections, or lack of bandage changes. A review of the record establishes that Nurse Mary Adams never saw Thayer and took no actions in relation to his treatment. Adams was not assigned to the Ellis Unit and had no supervisory authority to respond to Thayer's complaints or grievance forms, which would not have been submitted to her. To the extent that Thayer argues that a change to his medication was ordered by Nurse Adams, rather than Dr. Adams, the record refutes this assertion.² *See Gobert*, 463 F.3d at 346 n. 24. Thayer has not demonstrated that the district court erred in dismissing his claims against Adams.

[2] There was likewise no error in the district court's dismissal of Thayer's claims that Flisowski and Gonzales failed to treat him. We must conclude, after carefully reviewing the record, that Flisowski's and Gonzales's actions did not show deliberate indifference, and were not "objectively unreasonable in light of clearly established law at the time of the conduct in question." *See Freeman*, 483 F.3d at 411. Thayer says Flisowski and Gonzales denied him treatment and ignored his complaints of pain. However, they had no authority to prescribe drugs or embark on a different course of treatment. Moreover, Thayer's assertions are belied in part by his statement that Flisowski examined his records on March 30, 2005, and concluded that she could not give him Tylenol # 3 in light of Dr. Adams's orders. Thayer has never asserted that he asked the defendants for Motrin, that they refused to give him this drug, or that they otherwise hampered his receipt of this medication. While Thayer complains that his dressing was not changed, this was not prescribed, and Thayer suffered no infection or lasting harm. Because Gonzales and Flisowski were not empowered to take action contrary to doctor's orders, their inability to alleviate Thayer's pain is not a grievance of constitutional magnitude. *See Gobert*, 463 F.3d at 346; cf. *Easter*, 467 F.3d at 464-65 (denying qualified immunity where nurse failed to follow a prescribed course of treatment

that called for the administration of nitroglycerin to inmate when he experienced chest pain); *Harris v. Hegmann*, 198 F.3d 153, 159-60 (5th Cir.1999) (denying qualified immunity to doctor and nurses who ignored inmate's "urgent and repeated requests for immediate medical treatment for his broken jaw and his complaints of excruciating pain").

III. DISCOVERY MATTERS

*8 [3] Thayer says the district court hamstrung his ability to prove his case by denying his discovery request on the basis that defendants had invoked qualified immunity. "We review the district court's decision to preclude further discovery prior to granting summary judgment for abuse of discretion." *Krim v. BancTexas Group, Inc.*, 989 F.2d 1435, 1441 (5th Cir.1993) (citations omitted). Thayer has shown no error in connection with the district court's discovery ruling. The defense of qualified immunity protects officials "from the concerns of litigation, including avoidance of disruptive discovery." *Ashcroft v. Iqbal*, --- U.S. ---, ---, 129 S.Ct. 1937, 1953, 173 L.Ed.2d 868 (2009) *892 (quotation omitted). In accordance with this principle, a defendant who invokes qualified immunity "is entitled to dismissal before the commencement of discovery" if the plaintiff's assertions fail to "state a claim of violation of clearly established law." *Vander Zee v. Reno*, 73 F.3d 1365, 1368 (5th Cir.1996) (internal quotation marks and citation omitted). Even limited discovery on the issue of qualified immunity "must not proceed until the district court first finds that the plaintiff's pleadings assert facts which, if true, would overcome the defense of qualified immunity." *Wicks v. Miss. State Employment Servs.*, 41 F.3d 991, 994 (5th Cir.1995) (emphasis omitted). Thayer does not identify, and a review of his complaint does not reveal, allegations sufficient to raise a specific factual issue concerning the legality of the defendants' behavior such that he would be entitled to discovery. Thayer has shown no error in connection with the district court's discovery decision.

IV. APPOINTMENT OF COUNSEL

[4] Finally, Thayer argues that he should have received appointed counsel because his case is complex and he is ignorant of the law. Indigent plaintiffs proceeding under § 1983 are not entitled to appointed counsel absent exceptional circumstances, and we review the denial of such a motion for a clear abuse of discretion. *Baranowski v. Hart*, 486 F.3d 112, 126 (5th Cir.), cert. denied, 552 U.S. 1062, 128 S.Ct. 707,

169 L.Ed.2d 553 (2007); *Williams v. Ballard*, 466 F.3d 330, 335 (5th Cir.2006). Factors used to determine whether the appointment of counsel is appropriate in a civil case include “the type and complexity of the case,” the plaintiff’s ability to present his case, the plaintiff’s ability to investigate his case, and the level of skill needed to present evidence and cross-examine witnesses. *Baranowski*, 486 F.3d at 126 (quotation omitted). Thayer has not shown that his case is exceptional. He has investigated and presented the facts of his case well, and has ably identified the controlling legal standards. The district court did not abuse its discretion by declining to

appoint counsel to represent Thayer. *See id.*; *Williams*, 466 F.3d at 335.

V. CONCLUSION

For the foregoing reasons, the judgment of the district court is **AFFIRMED**.

All Citations

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Footnotes

- * Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.
- 1 Gonzales did not join in this motion. The Attorney General’s office stated that “this office has not been in contact with Margie Gonzales, despite our efforts to do so. She has not requested representation, and to our knowledge, has not been served with process.” The Attorney General reiterated these assertions in its letter brief on behalf of Appellees Adams and Flisowski.
- 2 To the extent Thayer avers that his declarations, when coupled with those of other inmates, raise a genuine issue of material fact as to his claim against Nurse Adams, he is mistaken. None of these individuals claims to have heard or otherwise witnessed Nurse Adams change Thayer’s medication. They either allege that they heard someone else aver that Nurse Adams had taken this action or assert that Nurse Adams took this action without explaining how they learned of Nurse Adams’s involvement. Thayer thus offers only hearsay and assertions lacking any indicia of personal knowledge.

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